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THE PUBLIC LAND SYSTEM OF TEXAS, 1823-1910

BY

REUBEN McKITRICK
Professor of Economics
Iowa State Teachers College

MADISON, WISCONSIN
1918
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PREFACE

A well-known English writer, Mr. Percy Alden, says that the history of a nation is in large measure a history of its land system. One of our own pioneer builders, Mr. James J. Hill, says: "Land without population is a wilderness, and population without land is a mob. The United States has many social, political, and economic questions—some old, some new—to settle in the near future; but none so fundamental as the true relation of the land to the national life. The first act in the progress of any civilization is to provide homes for those who desire to sit under their own vine and fig tree. A prosperous agricultural interest is to a nation what good digestion is to a man."

America has had the wilderness; whether or not it shall have the mob depends upon the intelligence and the ingenuity with which it develops its system of land tenure and encourages the growth upon the land of a large body of plain but capable and industrious rural folk. The most significant event of the nineteenth century in America was the passing of free land, the transformation of a vast body of public wealth into private property. Just as the acquisition of this spacious domain gave vigor to our industry and color to our fancy, so the generous and beneficial use of our heritage will give virility to our manhood and stability and strength to our national character.

Although the task of disposing of our public lands, especially for agricultural purposes, seems to be nearly completed, the problem of the landless man is no less serious than in any previous age. How to get a foothold on the soil is still the all-absorbing question for increasing numbers of young men, and so the nation faces a situation no less grave than that of peopling a continent and transforming a wilderness into a productive asset. In this situation a few doubtless will say, "Let well enough alone." A few others ardently advocate the idea that the government should tax land now in the hands of private owners to the extent that they will release all that they can not profitably cultivate themselves. Many believe that the government should render the individual some assistance in the purchase of land, while a few would go so far in this direction as to establish a system of land banks that have been "saturated with government credit." Every one recognizes the importance of the attitude which the government takes toward the acquisition and ownership of land and many feel that the necessity for immediate action is imperative. It has been with the hope that the experience of Texas in disposing of its public lands would give some indication of what the future attitude of the government should be, of affording a long range point of view, so to speak, that this monograph has been prepared.

This is an historical thesis. An effort has been made faithfully to present the facts and, in the main, to let them speak for themselves. An attempt is made not only to describe the legal methods by which Texas disposed of its public lands but also to trace out the operation of these methods and to ascertain some of their social and economic effects.

It is a pleasure to acknowledge the assistance I have received in the preparation of this monograph from many of my fellow-workers, library associates and government officials. I desire particularly to express my appreciation of the encouragement and assistance I have received from Dr. Richard T. Ely who has read the entire manuscript and kindly and minutely criticised it; also from Professor Henry W. Farnam and from Professor B. H. Hibbard who have also read the manuscript and given me many valuable suggestions. Assistance from the Carnegie Institution of Washington, D. C. is also gratefully acknowledged.

Reuben McKitrick.

Cedar Falls, Iowa
April, 1917

THE PUBLIC LAND SYSTEM OF TEXAS, 1823-1910

INTRODUCTION

State versus National Ownership and Control of Unoccupied Public Land

Texas is the only state ever admitted to the Union that subsequently has had complete control over the disposition of the unoccupied public land within its borders. The federal government was organized and established under the United States Constitution in 1789, and when thus organized it became the sole proprietor and "lord paramount" of the public domain. As successor to the old colonial government under the Articles of Confederation this new republic came into possession of all the public land which had been acquired under the treaty of 1783 and by virtue of the cessions from New York, Virginia, Massachusetts, Connecticut (partial), and South Carolina. As a nation, it received cessions directly from North Carolina and Georgia.[1] Since that time the United States has acquired vast tracts of public land, both by treaty and purchase. The uniform policy of the government has been to survey these lands, encourage settlement upon them, divide them into political divisions and organize a territorial form of government for each division as soon as the population had grown sufficiently to warrant such organization. Later the territory was admitted as a state at the discretion of Congress. Thus all of the states, except Texas, that have been admitted to the Union have been founded upon land belonging to the federal government, and have existed under a territorial form of government within the jurisdiction of the United States prior to their admission to the Union.

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[1] Donaldson, *Public Domain*, p. 59.

But Texas was never an integral part of the territory of the United States before it was admitted to the Union. Its colonization and development preparatory to statehood had taken place under a foreign government and it became a state in the federal union by virtue of its annexation to the United States. An agreement was made in the treaty of annexation to the effect that the state of Texas should be responsible for all public debts of the late Republic of Texas, but that it should retain all of the public lands belonging to that government.[2] Thus the state of Texas became the proprietor of a vast area of public land which was wholly subject to the disposition that should be made of it by the legislature.

The experience of Texas, with reference to public land, has been different from that of any other state in that the legislature has had complete control of all the public land within its borders. In other states the legislatures have had control of only such limited quantities of land as have been granted to the states by Congress for particular purposes. Under the system of congressional grants for public schools twelve states received one section for each township, and sixteen others received two. In this way California received 6,915,404 acres which is the largest number of acres that has been granted to any state. These lands have been disposed of according to the will and judgment of the California legislature, except that the proceeds were required to be applied to the funds for which the lands had been granted. In contrast to this system the Texas legislature has had complete control over and has disposed of 140,656,280 acres of land, exclusive of the 67,000,000 acres which it sold to the United States government in 1850 for $10,000,000.

The experience of Texas in the disposition of its public lands has differed from that of other states in another respect. The state has been free to use the lands and the proceeds from them as the legislature might see fit. Other states have been free to lease or sell their public lands as the legislatures might deem expedient, but they have been bound to use the proceeds for the benefit of the funds for which the lands had been donated by Congress. In a few instances lands have been granted by Congress directly to the states to encourage railway building.[3] Apart from these grants, states other than Texas have had no lands to dispose of, except those which have been granted for the benefit of their public schools, universities and colleges. But Texas has had immense quantities of land to use as a source of general revenue; to sell or give away in order to encourage other people to settle within its borders; to aid internal improvements; and to reserve from individual occupation and settlement in order to create an endowment for its educational system and thereby secure a greater return at a future time. All of these plans have been tried. In most instances they have been attended with some measure of success, but, generally speaking, lack of good business judgment and a representation of selfish private interests in the legislature have kept the state from realizing the largest possible benefits from its vast heritage.

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[2] Sayles, *Early Laws of Texas*, 1: 567.

General Tendencies in Land Legislation

During the past century, at least prior to 1870, the general tendency of all European land legislation has been toward individual and uncontrolled ownership.[4] Feudal tenures and communistic holdings have been broken up and cast aside. Entails and primogeniture have been abolished or greatly curtailed in many countries, and all forms of legal interference with free disposal and bequest have been so severely attacked that they have been either entirely obliterated or greatly modified. Methods of conveyance and mortgage have been intensively studied and the forms simplified until the transfer of a farm became almost as easy as the sale of a horse or a bushel of wheat. The old barriers to freedom of contract were torn away and a serious effort was put forth to make land an "object of possession, use and exchange in just the same way as a piece of furniture, a horse, money or other article of personal possession is at the disposal of its owner."[5] Landlordism and tenancy were discouraged in Ireland and England; the peasants won the contest with the landlords and the manor in France; and the great system of "rent banks" was created for the encouragement of independent ownership among the farmers of Germany.[6] Private property in land became more highly developed; land was brought into the category of objects of personal ownership, and its transfer and free disposal were placed on the economic basis of supply and demand.

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[3] Donaldson, *Public Domain*, p. 270.

[4] Cobden Club, *Systems of Land Tenure;* see also Cheyney, Edward P., *Recent Tendencies in the Reform in Land Tenure* in *Annals of the American Academy of Political and Social Science*, 2: 309–323.

Since 1870, however, another tendency, just as distinct and just as marked, has manifested itself. In this instance the movement has been somewhat away from individual ownership and the right of free disposal. Laws have been passed in France which compel the landowner to pay an outgoing tenant an amount equal to the increase in the value in the farm due to improvements which he has made during his tenancy. Under this system, the tenant, independently of the landowner and even without his consent, is enabled to make improvements upon the land according to his own judgment and at his own discretion and to demand an indemnity for them at the expiration of his lease.[7] This principle is said exactly to have reversed the former policy of assimilating land to other forms of property and to have introduced an element of joint double ownership instead of absolute single possession. Similar measures have been introduced into England, Scotland and Ireland, and have been seriously debated in the Belgian parliament. In Prussia a law was passed in 1890 which permitted the establishment of what are practically permanent tenancies, that are irredeemable except through the consent of both parties.

The most recent, perhaps, and certainly a most interesting experiment in the way of legislative interference with individual ownership of land, is now being tried in England under the Small Holdings and Allotments Act of 1908.[8] This Act authorizes the county councils to acquire land, by compulsory purchase if necessary, which they may sell in tracts not exceeding fifty acres for one-fifth of the purchase price in cash and small half yearly payments of the principal and interest for the balance within a term not exceeding fifty years, as may be agreed upon. The county councils are also authorized to create small tenancies on tracts of land not exceeding five acres, (1908, sec. 27), for periods of time varying from fourteen to thirty-five years, by compulsory hire, if necessary, and at a rent fixed by a public valuer. The object of these laws is "not to encourage dairy farming and market gardening," says a recent writer, but their intention is "the larger one of providing a broader stepping stone between the agricultural laborer and the tenant farmer and of thereby retaining on the land more of its best blood than heretofore."[9] Mr. Hermann Levy also remarks[10] that the framers of these laws have "created a program of agrarian reform based not simply upon the abolition of entails or on the avoidance of protective tariffs, but aiming at a positive, constructive end, namely at the creation of a new class of small cultivators."[11]

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[5] Cheyney, *op. cit.* p. 320.

[6] Cobden Club, *op. cit.* p. 324 *et seq.*

[7] Cheyney, *op. cit.* pp. 320–321.

[8] 8 *Edward* 7, Ch. 36, p. 122 *et seq.* The present law of England relating to small holdings and allotments is embodied in the Act of 1908, although the principles of this legislation have been developed through a long series

The practice of an agriculture in the latter part of the eighteenth and the first part of the nineteenth centuries which was devoted chiefly to grain production was a very important condition, among a number of others, which resulted in an extensive absentee ownership of land in large tracts, more than half of the land in England now being owned by fewer than three thousand persons. The land also came to have a value for its sporting and its social and political advantages, so greatly in excess of its

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of Acts, the most important of which are the Act of 1892, 55 and 56 *Victoria*, Ch. 31, and the Act of 1907, 7 *Edward* 7, Ch. 54. The Act of 1892, except so far as it relates to Scotland, and the Act of 1907 were repealed by the Act of 1908.

[9] Fay, C. R., *Small Holdings and Agricultural Cooperation in England*, in *Quarterly Journal of Economics*, 24: 501, (May 1910).

[10] Levy, Hermann, *Large and Small Holdings*, 1911, p. 146, translated by Ruth Kenyon from a German edition which was published under the title *Entestehung und Ruckgang des landwirtschaftlichen Grosbetriebs in England*, "with considerable additions by the author". This book treats in a splendid way the relation of the size of farms to advantageous agricultural production and the historical and practical aspects of the legislation in England designed to bring about small holdings.

[11] See Appendix III, *a*.

value for agricultural uses as practically to deprive the operating farmer of any chance to obtain a holding which would afford him a profitable occupation.[12] Large tracts of land thus became luxuries in the hands of the well-to-do rather than a means of obtaining a livelihood in the hands of industrious occupants. A diminishing agricultural population and an increasing dependence upon foreign countries for its food supply have led the English government to modify the rights of private property in land so as to readjust the size of the holding to the needs of agricultural production.[13] "In contradistinction to the plans of communistic land reformers," however, says Mr. Levy,[14] "this law refuses to limit in general the rights of property in land; it will only limit them just at the point where they oppose a development which is desirable from the purely economic point of view."[15]

Thus we see a distinct tendency, sometimes to create in fact a joint double ownership, but most frequently perhaps only to modify the rights of property in land so that individual ownership, rather than standing in the way of economic progress, will actually promote it.

Professor Edward P. Cheyney, of the University of Pennsylvania, in commenting upon this movement away from individual ownership, says:[16]

> "We have apparently ceased to try to treat land exactly as other

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[12] See Levy, *op. cit.* pp. 101–124 and 200–213; an excellent account of the development of large estates in England is presented by Marriott, J. A. R., in his article, *The Concentration of Estates and the "Decay of the Yeomanry"* in *Fortnightly Review*, N. S. Vol. 94, pp. 1112–1128, 1913; see also Taylor, H. C., *The Decline of Landowning Farmers in England*, Bulletin of the University of Wisconsin, Vol. 1, No. 1, 1904.

[13] There is a considerable body of literature which sets forth the efforts of the English people to solve their land problem as it has arisen since 1880. The following references, in addition to those already cited, are well worthy of consideration: Marriott, J. A. R., *Evolution of the English Land System*, in *Fortnightly Review*, N. S. Vol. 94, pp. 460–475, 708–722, and 1112–1128, and N. S. Vol. 95, pp. 539–553; Lincolnshire, *Rival Land Policies*, in *Nineteenth Century*, 71: 1134–1146; Parker, Sir Gilbert, *A Word for Small Ownership* in reply to Lord Lincolnshire, in *Nineteenth Century*, 72: 421–431; Jameson, T., *Hope of Small Ownership Under a New System*, in *Nineteenth Century*, 73: 156–176; Alden, Percy, *Democratic England*, pp. 238–263; and Parker, Sir Gilbert, *The Land, the People, and the State*.

[14] Levy, *op. cit.* p. 145.

[15] See Appendix III, *b*.

[16] Cheyney, *op. cit.* p. 823.

forms of property. Recognizing its intrinsic peculiarities, society is struggling with the problems involved in its more just and at the same time equally productive distribution and use . . . The movement away from individualism in land owning must be considered as a general one, not confined to any particular country. It is part of the great social movement of our time, turning away from the mere freedom of the individual and seeking for a reorganization of the community, disavowing the rule of selfishness however 'enlightened', and insisting on some degree of associative action, control and enjoyment."

THE LAND SYSTEM OF THE UNITED STATES

The genesis of the land system of the United States has been traced back to the Roman Empire.[17] It is said that the germ of modern public land laws is to be found in the famous Licinian laws of the Roman Republic. Many of the principles that characterize modern land legislation have been drawn from this source. First of all—the right of absolute property was a Roman idea and always foreign to Greece. The public domain (*ager publicus*) had to be defined; and when it was found that encroachments had been made, the land had to be surrendered to the state. Likewise, personal estates had to be of lawful size, and peaceful occupation was guaranteed by the state against third parties. Citizenship was an essential qualification for the enjoyment of privileges in the public lands, but every citizen was given the right to occupy public land in conformity to law. Manifestations and modifications of all these principles are to be found in the public land laws of the federal government. Even the public regulation of the size of landed estates is also exemplified in the settlement laws of the United States.

More exactly the land system of the United States may be said to have its beginning in the land cessions which were made by the seven claimant states to the national government soon after the close of the Revolutionary War for it was in this way that the public domain of the United States came into existence.[18] During the colonial period of American development the title to all the lands claimed by discovery and occupation was vested in the Crown of England and the king was as absolutely sovereign of these territories as of his ancestral demesne. He disposed of the lands freely, however, and conveyed to his grantees such powers as seemed to him good.[19] In accordance with the proprietary grants and charter privileges which the king conferred upon the colonies and colonists private titles to land in the thirteen original states emanated either directly or indirectly from the Crown of England or from the subsequent colonial and state governments[20] and the property rights which are involved in them are now held subject to the jurisdiction of the states in which the land is situated. In the transition from colonial to state government the English common law was made the rule of decision for all questions that were not provided for in the statutes.[21] The common law as modified by the interpretation of American courts now obtains in all the states that have since been organized on the public domain of the United States except in Louisiana where the French Civil Code still prevails. To this limited extent it may perhaps be safe to say that the land system of the United States has been and still is being influenced by the laws and customs of the English people.

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[17] Sato, Shasuke, *History of the Land Question in the United States*, Johns Hopkins University Studies, 4: 263–439.

[18] Treat, Payson J., *The National Land System, 1785–1820*, pp. 1–14.

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[19] Palgrave, *Dictionary of Political Economy*, 2: 556.

[20] Palgrave's *Dictionary of Political Economy*, Vol. 2, p. 559, gives the following brief summary of the Colonial land system: "Thus, it will be seen that while in Virginia the soil was divided into large plantations varying from 200 to 20,000 acres in size, in New England it was divided into petty holdings as small as one acre or even half an acre in size. In Virginia a quit-rent was demanded; in New England the land was held in full ownership, limited only by certain liabilities to forfeiture in case of alienation or removal. As the Colonies became better established and the economic condition changed, all these restrictions on full ownership were removed. This had been done in New England by the middle of the eighteenth century, while in other colonies all proprietary rights, manorial obligations, quit-rents, forms of primogeniture, entail and intestacy escheat, were abolished in 1776. The form of freehold tenure thus defined by the different state laws and constitutions for the settled and cultivated lands, was extended by the Ordinance of 1787 to the unoccupied lands of the nation. These lands by the Peace of Paris in 1783, had ceased to be Crown lands, and, after the state cessions of 1785 to 1790, had been taken in trust by the government of the United States for the benefit of the whole people".

For a brief but good account of the colonial land system, see also Treat, *op. cit.* pp. 23–26; Bogart's *Economic History of the United States* (1913), pp. 23–26 and 48–50, may also be consulted profitably.

[21] Hirschl, Samuel D., *Business Law*, 1915, p. iii.

In the manner specified on a preceding page the federal government acquired a property right to more than two million square miles of land outside of the thirteen original states and of the states of Kentucky[22] and Texas. Practically all of this land that is desirable for purposes of economic development has since been alienated and is now in the possession of individual private holders. Titles for most of this vast domain passed directly from the federal government to the individual owners. The only exceptions to this rule were in the cases of grants comprising about 125,000,000 acres that were donated to railway and other internal improvement companies and of cessions that were made to states for the purpose of encouraging the development of certain industrial and educational institutions within their borders. Thus private titles to land throughout all the United States except in the particular states mentioned above have emanated either directly or indirectly from the federal government.

A unique feature of the land system of the United States is the fact that as soon as land has been patented by the federal government to the individual it becomes private real property and as such it is subject to local rather than national regulation; i. e., state rather than federal regulation. All the property rights incident to a title to land, such as the right to hold and enjoy, to transfer by sale or bequest, or to dispose of in any manner which best suits the owner, are held subject to the protection and control of the state governments. These property rights are also held subject to the limitations which a state may impose upon property, especially those available to a state through the exercise of its rights of eminent domain, taxation and police power. In commenting upon this point Professor Goodnow says that in spite of certain equity cases to the contrary,[23] "it cannot be denied that the law of real property is probably more thoroughly a matter of local concern than almost any other branch of the law; and it may be assumed that it will be with the greatest hesitation that the Supreme Court will ever recognize a power in

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[22] In reality neither Kentucky nor Tennessee was ever included in the land system of the United States. For a good account of the situation in these states see Treat, *op. cit.* pp. 8, 105–6 and 346–355.

[23] Goodnow, Frank J., *Social Reform and the Constitution*, 1910, p. 195.

Congress, should Congress ever desire to exercise it, to regulate the law of real property." This is a fact of utmost importance in so far as it has a bearing on the framing of measures intended to bring about social and economic reform, such especially as relate to irrigation service, power rights on streams, reforestation, control and use of mineral lands, and the preservation of the soil and the alienation of farm lands.

The general policy of the United States has been to dispose of its land in small quantities and practically without cost to actual settlers. Throughout the nineteenth century land was abundant and free for the pioneer farmer.[24] Thus the United States endeavored to distribute its public lands equitably among its citizens; to encourage individual private ownership of landed property, and thereby hasten the occupation and development of its extended and varied domain.

> "In doing all this with so lavish a hand the government has been expressing the generous instincts of the government and their absorbing determination to go forth and find. For a hundred years and a little more this quest has been the drama of our life. It has given color to our civilization and buoyancy to the hearts of the people."[25]

In the early history of the nation the public lands were looked upon as a source of income to the national treasury and efforts were made to derive a revenue from them. During this time the squatter, with his venturesome spirit and his disregard for law, was a trespasser whose activities were to be suppressed, if need be, by the military arm of the government. The revenue policy was a failure, however, and gradually the early settler emerged from his status of trespasser and violater of the laws of the Union, became, first, a sort of "estimable criminal," then an ordinary adventurer whose activities were regarded with indifference, and finally a public benefactor whose fearlessness and hardihood were looked upon as indispensable qualities in the great struggle for the conquest of a continent. Then

> "It was realized by degrees that the public domain would have to be regarded as virtually free to those who were willing to go and live

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[24] See Appendix III, c.

[25] Lane, Franklin K., Secretary of the Interior, *Annual Report*, 1915, p. 8.

upon it and bear their share in overcoming the difficulties of frontier life. The land laws came to be looked upon as providing a method for regularizing the occupation of the land and for settling conflicts between rival claimants, rather than as a means for putting money into the national exchequer."[26]

The marvelous economic and social development that has taken place under this liberal land policy has served, however, to show its fallacies and indicate its weaknesses as well as to magnify its advantages. Laws that were designed for the occupation of agricultural prairie lands have been found to be ill-suited to the best use of the timber lands, and not at all adapted to suitable acquisitions of private property in land along water courses. In fact the very laws that were intended to provide land and a profitable occupation for the landless and the homeless are said to "have bred an immense amount of corruption, fostered speculation, endowed private monopoly with public wealth and pauperized whole communities."[27] The Public Land Commission, appointed by President Roosevelt, reported in 1905 that the federal land laws were so unsuited to their purpose that instead of promoting settlement they frequently prevented or retarded it.[28] But even in spite of all this if we feel that these laws have obtained as favorable results as might have been desired in encouraging economic activity and promoting settlement, still it must be conceded that they do not seem to have been well adapted to the problem of retaining the ownership of the land in the hands of the operating farmer. Scarcely has the alienation of public domain to "actual occupants of the soil" been completed, when the question of landlordism and tenancy looms up as one of the most portentous factors in all the great problem of rural betterment.

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[26] Shaw, Dr. Albert, *Political Problems of American Development*, 1907, p. 87.

[27] Ely, Dr. Richard T., *Outlines of Economics* (1908), p. 593; for Dr. Ely's comment regarding the influence of the American and Canadian homestead laws upon economic activity and the acquisition of property by large numbers, see his *Property and Contract in Their Relation to the Distribution of Wealth* (1914), 1: 328, particularly where he says: "The land has been practically given away, or given in return for service in its development, and in comparatively small tracts; this has afforded chances to many and not allowed anyone to monopolize the land". The writer does not regard this statement as a contradiction to that quoted in the text above, but as a comment on a particular part of the land system of the United States whereas the one quoted in the text relates to the whole system.

[28] U. S. Public Lands Commission, *Report*, 1905, p. xiv.

Uncontrolled acquisition and use of mineral lands have also been attended with serious evils. Arid districts of the West, suitable only for grazing purposes, present a problem in land-ownership in itself as distinct and as vital as the acquisition of a homestead if large landed estates and their accompanying system of landlordism and tenancy are not to be encouraged in America. The reclamation service is daily becoming a feature of increasing importance, and the necessity of public control of water courses is demanding constantly increased activity on the part of the government in order to keep them from being monopolized by private corporations and syndicates. All these problems have called for a revision of the public land system, and the pursuance of a broad policy of public use of the great national domain has started a movement toward a reversal of the old time land policy. Already more than 127,000,000 acres of timber land, an area equal to the whole of France, have been reserved from private acquisition. Likewise millions of acres of mineral lands and sources of water power have been similarly reserved.

This reversal of policy is but a part of the great movement away from individualism that was noted in a preceding section and toward a more careful use of the land as a productive factor for the benefit of the community at large. In commenting on this situation in the United States Dr. Albert Shaw says:[29]

> "All this change from the policy of private ownership to the policy of landlordism and collectivism on a great scale, in the management of the public domain, signifies no change whatever in the spirit or purpose of our American democracy. Our principle from the beginning has been a constructive one. Our government has already definitely occupied itself with the task of creating a great nationality. In the diversity of physical and climatic conditions, we have had to change our laws and administrative methods in order to achieve the building up of true American communities in the vast regions of mountain and plain and unequal rainfall extending from western Nebraska to the Sierras. The principles of democratic equality and personal initiative will not be destroyed by this new policy, but on the contrary, will be promoted and kept alive."

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[29] *Op. cit.* p. 114.

THE SPANISH LAND SYSTEM

The history of Spanish law begins with the conquest and civilization of the Iberian peninsula by the Romans.[30] It is said that until the fifth century of the Christian era the rule of the Roman law in Spain was as complete as in any Roman province. During the time of the Visogothic conquest the conquerors lived by their customs and laws; and in the case of conflict, the Roman law gave way, but the Moorish conquest (711–1492) left few traces on Spanish law.

The civil law of Spain is not found in the decisions of the courts but in various compilations made by royal authority and in the commentaries of jurists. The work of compiling this great body of legal principles was begun in 1255, but it was not promulgated until 1348 and did not go into full operation until 1505 when it received the royal sanction at the Cortes in the city of Toro. The name *De Partidas* was applied to it because of its division into seven parts. It contained all of the fundamental principles of the laws of Spain. A learned writer speaking of the *Partidas* says:[31]

> "We find in every page of that work the highest wisdom and the most stern justice. It gave to the monarch, under whose auspices it was executed, titles more just to the epithet of wise, bestowed upon him by his contemporaries, than his astronomical researches, however surprising the one may have been considered in an age when most studies were so much disregarded."

The system of Spanish legislation was completed in 1567 when the *Recopilacion of Castille* was published by the authority of Philip II. The government of Spanish dominions in North and South America has been conducted according to the provisions of the *Recopilacion of the Indies,* published in 1661 under the authority of Philip IV. Thus the Spanish law is a direct outgrowth of old Roman institutions. It is the most widely extended branch of civil law and prevails in a wider area and affects a larger population than any other system except the English.

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[30] The statements of fact relative to the history of Spanish law that are made in this section are taken from *The New International Encyclopaedia, first edition,* 16: 42, and from Sayles, *Early Laws of Texas,* 1: 151 *et seq.;* see also Wooten, *op. cit.* 1: 845, for a very brief description of the Spanish Civil Law and a statement as to the extent of its application in Texas. There are no works of value in English relating to this subject except translations from *Las siete partidas.*

[31] Quoted in Sayles, *Early Laws of Texas,* 1: 153.

Laws regulating certain contracts and wills were promulgated in Spain as early as 1348, but the *Partidas* fixed the rules for making wills and established the measures relating to inheritance. Many of the provisions of the *Partidas* have been abrogated or amended, but the great principles of natural law contained in it have not been changed. Feudal tenures and entails, however, were abolished at the beginning of the last century and an important law requiring the registration of conveyances and mortgages was passed in 1861. Civil marriage was introduced in 1870. To this extent Spain has had a part in and reflected the world-wide movement toward individual ownership of landed property.

THE TEXAS LAND SYSTEM

The land system of Texas had its origin in the Spanish Civil Law which was the rule of decision in Texas prior to the attainment of independence from Mexico and throughout the four succeeding years. In general the Common Law of England was substituted for the Spanish law in 1840 but certain peculiar features of the Civil Law, especially some relating to land, were still retained.[32] Thus the land system of Texas has been developed under two different bodies of legal rules and is exceptionally complex because of this fact. The special difficulties in the Texas system arising from this situation are set forth by Mr. Wooten in the following terms:[35]

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[32] By the Act of the Congress of the Republic of Texas on January 20, 1840, the Spanish Civil Law was repealed and the English Common Law was made the rule of decision with certain specific exceptions. The title and first two sections of that Act are as follows:

"An Act to adopt the common law of England, to repeal certain Mexican laws, and to regulate the marital rights of parties.

"Section 1. *Be it enacted, etc.,* That the common law of England (so far as it is not inconsistent with the constitution or the acts of Congress now in force), shall, together with such acts, be the rule of decision in this Republic, and shall continue in full force until altered or repealed by Congress.

"Section 2. That all laws in force in this Republic prior to the first of September, 1836 (except the laws of the consulation and provisional government, now in force, and except such laws as relate exclusively to grants and the colonization of lands in the state of Coahuila and Texas, and also such laws as relate to the reservation of islands and lands, and also of the salt lakes, licks and salt springs, mines and minerals of every description, made by general and state government) be, and the same are hereby, repealed". Sayles, *Early Laws of Texas,* 1: 334.

> "In those states of the American Union whose system of landed estates is derived from the feudal tenures and rules of real property of English common law comparative simplicity and similarity characterize the subject. But in Texas and those sections of the United States formerly belonging to the Latin races, and ruled by Roman law and its modified application to Spanish and French colonies in America, the study of the laws of real estate is unique and somewhat complicated. The difficulty is often enhanced, as is the case in Texas, by an anomalous blending of the two systems of jurisprudence consequent upon Anglo-American conquest, and also by a peculiar and independent system of land titles derived through special legislation in disposing of a vast extent of public domain which was reserved to the state upon its annexation to the United States."

In the account of the development of the Texas land system that is to follow and of the methods that have been adopted by the state in transferring its public lands to private owners, it will be seen that the same efforts to encourage free and uncontrolled ownership of private property in land have been made in Texas that have been manifested in all other civilized nations of the world. Land has been free to all those who would settle upon and occupy it in good faith. It has been granted and patented to the original claimants on terms that have made its alienation respond to the force of the economic principle of supply and demand, and its conveyance, either by sale, lease or bequest, has been unhampered by governmental regulation, except such simple requirements of acknowledgment and registration as are necessary to establish the validity of contracts. The restrictions to freedom of disposal that are imposed by feudal tenures, primogeniture and entail have never seriously affected land owners in Texas. Moreover, the nearest approach to the German system of long time loans on farm mortgage security, that could until recently be found in this country, is exemplified in the sale of Texas school lands on a credit of forty years at a low rate of interest. In 1910 approximately $48,000,000 of the permanent school fund, covering about 30,000,000 acres of land, was invested in land notes of this character with interest rates varying from 3 to 8 per cent.[34] The tendency toward restrictive legislation, however, may also be clearly seen in the recent efforts of the state to secure better returns from such small quantities of land and minerals as it still possesses. Thus, even though many defects and shortcomings in its land legislation may be and will be pointed out in succeeding pages, Texas has kept pace with the progress of the times in providing for the social well-being of its citizens.

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[35] *Op. cit.* 1: 785.

IMPORTANCE OF THE LAND QUESTION IN TEXAS

Nearly every method or device for disposing of public land known to law, except the Georgia lottery system, has been tried in Texas. Land has been freely given to settlers; it has been exchanged directly for the services of soldiers and of a construction company formed to furnish the material and labor and erect a capitol building; it has been the basis of government credit in the issues of land scrip; it has been donated in large quantities to aid internal improvements; it has been sold outright as a direct source of revenue; and it has been set aside as an endowment for public education in order to obviate future necessities of taxation. Inasmuch as Texas is the only state in the Union, the source of whose private land titles is in the state rather than the national government, a study of its public land legislation is especially important because it shows the effect of local as compared with national government ownership and control of one of the three great agents of production. The significance of the experience of Texas is greatly enhanced by the fact that no other state has had an opportunity to deal with this question on such an extensive scale and that neither Texas itself nor any other state in the federal union will have a chance to do so again. With the exception of less than 2,000,000 acres of unsold school land which is mostly of inferior quality and which is being sold as rapidly as possible, Texas has no more public land to dispose of.[35] Public land legislation in Texas is, therefore, now practically at an end, but doubtless no field can elsewhere be found for years to come that will be so rich in material for economic and social investigation of the results that have attended governmental ownership and control of public lands.

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[34] Commissioner of the General Land Office, *Biennial Report*, 1910, p. 31; see also State Treasurer, Annual Report, 1908, p. 37.

The land question in Texas is also especially important because the local control and administration of the public lands within its borders has not resulted in larger industrial opportunities or better economic and social conditions among the working population of the state than prevail in other states where the control of the public land was national instead of local; in some respects, particularly among the tenant farmers, working conditions seem to be worse than they are elsewhere. In a recent state election one candidate for the nomination for governor is reported as saying that: "This (the land problem) is the biggest question in Texas," and another says: "Texas should enter upon a fixed and definite land policy which will discourage monopoly, encourage the breaking up of large holdings, and the acquisition by our good people of homes and small farms.[36]

LIMITATIONS OF TREATMENT

The title of this monograph limits the study of the land laws of Texas to those which were enacted for the purpose of transferring public land to private owners. It, therefore, excludes from the discussion all questions of private land transfer, leases, mortgages and inheritance because these problems belong more to the domain of private than of public law. They are factors of great importance, however, in a treatment of the general land system of a state or nation. Consequently, an effort will be made in the succeeding pages to describe only those methods which have been used by the state of Texas in the disposition of its public lands and to note some of the results that have attended this legislation.

The year 1823 is chosen as the opening date because it was the date of Austin's contract which marks the beginning of a real effort at colonization in Texas. The year 1910 is chosen for the closing date because it corresponds to the time when public land in Texas had practically all been disposed of.

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[35] Commissioner of the General Land Office, *Annual Report*, 1914, p. 11.

[36] Quoted by Granbury, J. C., *The Land Problem in Texas and the Remedies Proposed*, in *The Survey*, 32: 394, 1914.

PART I—FORMATION OF THE PUBLIC DOMAIN OF TEXAS

CHAPTER I

HISTORY OF THE CHANGES IN GOVERNMENTAL AUTHORITY AND OF COLONIZATION PRIOR TO 1836

Spanish Colonization

Soon after the discovery of America the land which now comprises the state of Texas was claimed for the King of Spain by right of conquest and of occupation.[1] But this claim did not fully establish the authority of the king, for until nearly the close of the nineteenth century all newly discovered territory seems to have been regarded, in most Catholic countries, as the property of the church. The pope, as head of the church, claimed the right of property in himself to all lands, buildings and profits belonging to it and administered this property as though it were his own estate. His authority in newly discovered countries was so universally acquiesced in that the proudest sovereigns were accustomed to solicit from him the right to annex to their dominions countries which had been discovered by the enterprise of their own subjects. Ferdinand and Isabella thus obtained from Pope Alexander VI a grant to the Crown of Spain of all the tithes in the countries discovered by Columbus on condition that provision should be made for the religious instruction of the natives. Soon after this Julius II conferred on

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[1] Sayles, *Real Estate Laws of Texas*, 1: 47.

Ferdinand and his successors the right of absolute disposal of all ecclesiastical benefices. These grants practically made the king of Spain the head of the Roman Catholic Church in all Spanish possessions in America and vested every species of authority in him. Thereafter conflicts between spiritual and temporal jurisdictions were unknown, and the king, independently of any foreign power, was looked upon as the source of sovereignty.[2] Thus by right of conquest and occupation and by virtue of its contractual relations with the pope of the Roman Catholic Church the Spanish government acquired full possession of its dominions in America and all public lands in Spanish provinces were considered the property of the Crown.

Liberal donations of land and large outlays from the royal treasury[3] were made by the Spanish government in order to encourage the colonization and settlement of its American possessions in Texas. Elaborate laws were proclaimed which prescribed the mode of government for the new colonies and which set forth in minute detail the plans whereby meritorious citizens were to be given large quantities of land and were to be protected in the enjoyment of their property rights. Thus in 1523 an offer was made to distribute houses, lots and lands to all those who would settle on new land.[4] According to this law, a distinction was made between gentlemen *(escuderos)* and laborers *(poenes)* or those of inferior merit, and the size of the grants was graduated according to the qualifications and services of the grantees. Settlers were required to build on their lots, to live in their houses, to clear and cultivate the arable lands and to stock the parts designated as pasture lands. After these obligations had been fulfilled and the settlers had lived on their land four years, they were authorized to dispose of their grants freely as their own property. Again in 1776 a new decree was issued by the king according to which he placed special officers in charge of these settlements, directed them to encourage the settlers to sow, raise and prepare flax and hemp, and authorized them to make a distribution of his lands, if they should deem it necessary, in order to accomplish this important object.[5]

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[2] *Ibid.*, pp. 79–82.

[3] Garrison, George P., *Texas*, pp. 87–88.

[4] Sayles, *Early Laws of Texas*, 1: 17–19.

The Spanish government endeavored to establish permanent settlements in Texas because it sincerely hoped to Christianize the Indians and establish the Catholic religion in America. In addition to this it hoped to derive a revenue from the use of its public lands. These two purposes, religious and financial, were the incentives for all its colonizing activity.[6]

The most important form of settlement was the mission which was composed principally of a small group of priests and a number of Indians who were gathered within its walls to receive instruction in the forms of the Catholic religion and in agriculture and in the commonest arts and industries. Other forms of settlement, often closely allied with the mission, were the *presidio* or the military post and the *pueblo* or civil community.

But Spanish efforts to build up permanent settlements in Texas were a failure. In all, twenty-five missions and presidios were established; but when the Anglo-Americans began to go there early in the nineteenth century, only three remained.[7] The reason for this failure is found in the fact that the efforts of the government were directed toward establishing, supporting and protecting missions instead of developing civil communities capable of supporting and protecting themselves. Spain sent missionaries, explorers, and soldiers to Texas but never succeeded, in spite of the large inducements that were offered, in enlisting the services of the actual settler. The failure of Spanish colonization has been explained in the significant statement that Spain never either took care of the colonists or taught them how to take care of themselves.[8]

The first title to land in Texas was issued in 1731, and various large grants were made by Spanish kings from time to time until 1819. Authorities differ as to the total amount of land covered by titles issued under the laws of Spain. One writer states that such titles include about 20,000,000 acres, though another writer claims that 10,000,000 acres is, strictly speaking, all the land in Texas ever held under titles from the Spanish government.[9] Since no record of these titles has ever been made in the Texas land office, there is no way of knowing just how many were issued or how large an amount of land was actually granted by Spanish officers.[10]

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[5] *Ibid.*, pp. 37–41.

[6] See Garrison, *op. cit.* pp. 53–66 and Sayles, *Early Laws of Texas*, 1: 30 and 37–41.

[7] Yoakum, *History of Texas*, 1: 53–64; Garrison, *op. cit.* p. 65.

[8] Garrison, *op. cit.* p. 99.

Large grants of land in Texas have been held under the authority of the Spanish government as "mission lands," but an absolute title to them never was issued.[11] These lands are said to have been held like those of a college campus. They could be used and enjoyed by the inhabitants of the mission so long as it existed, but the lands did not belong to them and could not be inherited by their descendants. If for any reason the mission should become extinct, the lands were to revert to the government. By an order of April 10, 1794, the support of the royal treasury was withdrawn from the missions and the lands were ordered to be delivered to the civil officers of Spain. The people of the missions, however, by the same decree were given titles to a part of the lands formerly held for ecclesiastical purposes. The remainder was treated as a part of the public domain and part of it was alienated in conformity with the colonization law of Coahuila and Texas.

MEXICAN COLONIZATION

Mexico, as a Spanish province, was in a state of smoldering revolution from 1810 to 1820. Various grievances had been assigned as causes for the uprising, but the most important one was a law which gave native Spaniards privileges in Mexico superior to those of the people of that country, even to those of the people born of Spanish parents. The leaders were frequently killed or captured and the revolutionists driven into holes and corners, but in 1821 the movement was successful and Mexico became an independent nation.[12]

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[9] Sayles, *Early Laws of Texas*, 1: IX; Wooten, *Comprehensive History of Texas*, 1: 792.

[10] Sayles, *Real Estate Laws of Texas*, 1: 24.

[11] *Ibid.*, pp. 70–79; Wooten, *op. cit.* 1: 791; see also *McMullen vs. Hodge*, 5 Texas 34 (1849) and *Trevino vs. Fernandez*, 13 Texas 630.

[12] Garrison, *op. cit.*, pp. 95–96.

The Mexican government was not permanently organized, however, until 1824. During the interim public affairs were successively in charge first of a *junta* and a regency, secondly of an imperial government with Iturbide as emperor, and thirdly of a republic at the head of which a committee composed of three persons and styled the "Supreme Executive Power" was placed. Finally in the fall of 1824 as a fourth change, the constitution of Mexico was adopted, and the government was organized as a federal republic with popular representation similar to that of the United States. In fact the United States constitution was very largely used as a model. The legislative power was given to a general congress composed of two chambers, and judicial authority was vested in a supreme court of justice and in circuit and district courts. It is important, however, to notice that the authority of the courts was limited solely to the application of the laws and did not include the power to interpret them or suspend their execution. The power of interpreting the laws and of rendering a final decision as to their application was vested exclusively in the legislative branch.[13] This government established the Roman Catholic religion and prohibited the exercise of any other form of worship, but it did not concede the right of trial by jury.[14] Thus the government of Mexico underwent four successive and independent changes during the period intervening between 1821 and 1824.

The several states in the new republic had been declared to be free, sovereign, and independent, as far as the internal administration was concerned. It is pointed out, also, very distinctly in *Fisk v. Chambers*[15] that the national government of Mexico plainly and unequivocally recognized the right of the state to the vacant land within its borders, and of its right to dispose of it. The state thus being the owner of the lands could sell or donate the lands at its discretion. The state of Coahuila and Texas was organized under a provisional government as an integral part of the republic, and later adopted its own state constitution.

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[13] Sayles, *Real Estate Laws of Texas*, 1: 28 *et seq.*; see also *Houston vs. Robertson*, 2 Texas 1 and *Chambers vs. Fisk*, 22 Texas 504.

[14] White, *Land Law in California, Oregon and Texas*, 1: 374–380.

[15] 22 *Texas* 504

In 1821 Moses Austin, formerly a citizen of the United States, obtained a contract from the Spanish government which authorized him to establish a colony of 300 settlers in Texas, to grant lands to them, and to receive a grant of premium lands for himself as a payment for his services.[16] Before the formalities of making the contract had been completed, Moses Austin died, but the work which he had begun was taken up by his son, Stephen Fuller Austin. The Spanish governor of Texas asked him to prepare a plan for the distribution of lands to the colonists. The plan which he subsequently presented in writing virtually became the principle of the later Mexican colonization laws. Austin encountered a great deal of difficulty, however, in the unsettled conditions of the government which followed the overthrow of Spanish authority in Mexico. He was compelled to visit the city of Mexico and to remain there and work his contract through all the successive changes in government outlined in the preceding paragraph until he finally secured its approval by the recognized authorities of the republic in 1824.

The members of Austin's colony finally received their lands in accordance with the colonization law of 1823.[17] But since the same decree, which made this law applicable to Austin's colony, suspended it with reference to all other colonies, the new congress passed another general colonization law which merely adapted the principles of the former one to the new form of government.[18] The new law expressed the purpose of the government to colonize the territories of the republic and provided a method of settlement for all those lands of the nation which were not the property of individuals, corporations or towns. It extended an invitation to foreigners to settle in the state and promised security for their persons and property, if they would subject themselves to the law of the country. In addition to this it offered free lands to the settlers and guaranteed the contracts which empresarios might make with families so far as they were not contrary to law. Furthermore, the imposition of any tax whatsoever upon the foreigners was prohibited for a period of four years after their entrance. The duty of making such additional laws and regulations as might be necessary to accomplish this purpose was imposed upon the various state legislatures.

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[16] For a full account of Austin's negotiations in obtaining his contract see White, *op. cit.* 1: 559–586; also translations of the various laws and decrees of Spain, Mexico and the state of Coahuila and Texas in the pages immediately following.

[17] An English translation of this law may be found in White, *op. cit.* 1: 588; Sayles, *Early Laws of Texas*, 1: 42; and Gammel, *Laws of Texas*, 1: 27.

[18] White, *op. cit.* 1: 601; Sayles, *Early Laws of Texas*, 1: 51; Gammel, *Laws of Texas*, 1: 38.

Pursuant to the foregoing act, the state of Coahuila and Texas enacted a colonization law which became effective March 24, 1825.[19] The state also invited foreigners to immigrate to Texas and guaranteed security to all who should do so. As a special inducement to such immigration, lands were freely offered on condition that the immigrant should present a certificate of good character, take an oath of allegiance to the Mexican government, promise to observe the Roman Catholic religion, agree to live on the land and cultivate it for a period of six years, and at the end of the six-year period pay the state a small nominal sum, proportional to the class and quantity of the land received, as an acknowledgment of the grant. The land was classified in two general grades, arable and grazing. To those families whose occupation was the cultivation of the soil, one labor (177 acres) should be given; and to those who should raise stock, enough grazing land should be added to complete a sitio or league (4,428 acres). If the raising of stock was the exclusive occupation of the family, the quantity was limited to 24,000,000 square varas (4,251 acres). Single men were entitled to receive one-fourth of the quantity allotted to a family. When they were married, their quantity would be augmented to that of a family; and if they married natives, they would receive one-fourth more. The state executive was authorized to increase the quantities thus specified in the law in proportion to the family, industry and activity of the colonists. Freedom from state taxation during a period of ten years for any purpose whatsoever, except to prevent or repel a foreign invasion, was also held out as a special inducement to colonists.

The empresario system is a method of colonization whereby the government enters into a contract with the immigration agent to the effect that, if he will establish a colony of not less than a given number of persons within a definitely described territory and within a given time, it will furnish the land for these settlers on easy terms according to law and pay him for his services in premium lands. In Mexico this system had its legal basis in the colonization laws of 1823 and 1825. The plan was suggested by Austin's contract and the occasion for its adoption grew out of the economic conditions of the time. Mexico was abundantly rich in lands which had little value either from an individual or national point of view unless they were occupied and used. The government could offer large inducements to foreigners to settle upon and develop its public lands, but it had no means of publishing its offers in foreign countries or of seeking out those who might emigrate and become desirable citizens. Consequently, the law of 1825 specified that a grant of lands in the nature of a premium would be given to any man who should agree to introduce one hundred or more families at his and their own expense. The empresario or contractor was authorized to offer to all whom he might induce to immigrate the quantities of land that had been specified for other colonists. For these services the empresario would be given five sitios or leagues and five labors of land (of which one-half should be non-irrigable) for each one hundred families that he introduced and established within the state. A proportionate amount would be given for any number of families more than one hundred, but no land whatever would be given to the empresario if he failed to introduce that number of families.

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[19] White, *op. cit.* 1: 602; Sayles, *op. cit.* 1: 64; Gammel, *op. cit.* 1: 40.

The empresario thus became the advertising agent for the state. He went to foreign countries, particularly to the United States and to Germany, sought those individuals who he thought would make good settlers, and in a personal way presented the advantages and conditions of settlement which the Mexican nation had to offer. He did for the state what he otherwise might have done if it had seemed more economical to the Mexican congress to employ him merely as an agent and to pay him in cash directly out of the public treasury. The empresario system, however, was a much more efficient method of colonization than this, for it made the success or failure of the colony a question of financial success or failure for the empresario. The return which he received for his efforts depended not only upon the number of colonists he introduced but also upon their character as well, because the value of the land which he received was directly affected by their stability and industry.

Many empresarios undertook to fulfill their contracts by personal solicitation just as Austin had done in securing the families for his colonies. Others secured grants of land and then organized immigration companies such as the German Immigration Company and the Galveston Bay and Texas Land Company. The organization of the latter company is an illustration of the way this plan was worked out. Lorenzo De Zavala, Joseph Vehlein and David G. Burnet were empresarios who held contracts for large grants in southern Texas. They, together with some large capitalists in New York and Boston, organized the Galveston Bay and Texas Land Company of which Anthony Day and George Curtis of New York City and William H. Sumner of Boston were made trustees. This corporation furnished the capital for meeting the expenses of the enterprise and relied on the increase in the value of the lands granted to the empresarios to return the capital with a fair rate of interest.[20] The organization thus had all the prestige and advantage of a modern corporation with its organized collective activity and its decreased individual responsibility. It is interesting to note in this connection that Zavala and Burnet later became very active and prominent men in the public affairs of Texas, Burnet having been first president of the Republic of Texas and also secretary of state during the administration of Sam Houston.

Many changes and modifications were made in the original colonization laws as outlined above, but these were only matters of detail. So far as the general principle is concerned it remained unchanged and was used later by the Republic of Texas. It is important to notice, however, the special provisions worked out in these laws which were intended to preserve an equitable distribution of property. The general law of 1824 prohibited any one from acquiring more than one league of land suitable for irrigation, four leagues of arable land without facilities for irrigation, and six leagues of grazing land; eleven leagues (48,700 acres) altogether. Empresarios might acquire more than eleven leagues as premium land, but they were required to sell all the excess within a period of twelve years, otherwise the political authorities of the state were authorized to sell such excess at auction and pay the receipts, after deducting the costs of the sale, to the former owner. Land could not be transferred in mortmain.

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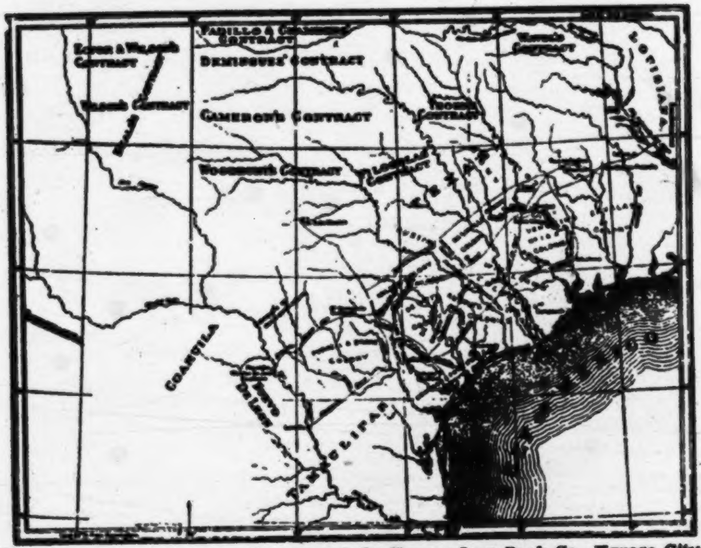
[20] Galveston Bay and Texas Land Company, *Circular* published in 1831, Document No. 10, Texas Misc. Pamphlets, Vol. 1, Wis. Historical Library.



Courtesy of the Vernon Law Book Co., Kansas City

MAP OF SPANISH TEXAS, 1835

One other law relating to the subject of colonization which is of special significance was the Homestead Exemption law of 1829.[21] This is probably the first law of its kind of which we have any record. It made the land of colonists and of empresarios wholly exempt from seizure for the collection of debts contracted previously to the acquisition of the land, regardless of the source from which the debts may have originated. Neither could a colonist, nor an empresario be sued or discommoded in any way on account of such debts for a period of twelve years. After twelve years they might be sued, but they could not be obligated to pay in lands, implements or tools. Fruits of the land or money were the only things that could be seized for debt. The same principle was re-enacted in the laws of the Republic of Texas in 1840,[22] and has been firmly fixed in Texas jurisprudence ever since.

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[21] See Appendix III, d.

The empresario system offered the solution for the problem of Mexican colonization. Two large grants were made in less than a month after the law was passed and one author in writing on this subject says that within seven years the whole map of Texas was plastered over, from the Sabine to the Nueces, with the claims of empresarios. The location of many of these grants is shown in the map of Spanish Texas in 1835. Of course a large number of the empresarios failed to complete their contracts, but others were eminently successful. An estimate, said to be probably quite near the truth, gives the population of Texas in 1827 as 10,000, and another in 1830 made the number 20,000 which is five times as large as the one estimated for 1821. These figures are exclusive of Indians.[23]

INDEPENDENCE AND ANNEXATION OF TEXAS

The Mexican colonization laws opened the doors to the outside world and actual settlers were really going to Texas. They also afforded an opportunity for the growth on Texas soil of a civilization that was wholly different from that of Mexico and that was soon to wrest Texas from the Mexican nation. Most of these settlers came from the United States, though many came from Europe, particularly from Germany. They were men of a rugged, hardy type, full of hope and determination; and though not adventurers for the mere sake of adventure, they were by no means lacking in courage. Pioneers in the true sense, they had gone to Texas not for speculation, but to establish homes,—to be a part of and to share in the hardships as well as the benefits of this undertaking. Thus Texas was rapidly becoming the home of aggressive and industrious groups of Anglo-Americans, men generally accustomed to having a voice in all matters which concerned their immediate well-being and very much given to having their own way in the isolated Texas communities where they had been a law unto themselves during the previous decade. It was this type of citizenship with which the Mexican government came in contact when it tried more vigorously to assert its authority over the northern frontier early in the thirties. A revolution ensued, the most essential cause of which is said to have been found "in the conflict between two inharmonious varieties of civilization, independently of any accident of Mexican Policy."[24]

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[22] Gammel, *op. cit.* 2: 347.
[23] Garrison, *op. cit.* pp. 155–7.

At first this revolution was a struggle for the constitutional principles on which the Mexican Federal Republic was organized; later it became a contest for independence. Success in this revolution made Texas an independent nation in 1836 and it was formally recognized as such by the United States, France, Holland, Belgium and England.[25] Nine years later it was annexed to the United States as a state in the federal government.

Thus within a period of twenty-five years (1820–1845) Texas passed through four successive changes in governmental authority. Originally it was a Spanish province. After the Mexican revolution, it was a part of the "State of Coahuila and Texas" in the federal government of Mexico. Then it was successively an independent nation and a state in the federal government of the United States.

Upon the separation of Texas from Mexico, all the vacant domain within its borders belonging to that government became the property of Texas and subject to its control. The entire territory of Texas exceeded 350,000 square miles in area, comprising all of what is now the state of Texas, a little more than the eastern half of New Mexico, and small portions of southwestern Kansas and southeastern Colorado and southeastern

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[24] *Ibid.*, p. 108.

[25] *Ibid.*, p. 252.

Wyoming.[26] At that time, titles had been issued to private owners by the former authorities of Spain and Mexico for only 25,517,391 acres out of this extensive domain.[27]

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[26] Donaldson, *Public Domain*, Map of territorial acquisitions; also in Garrison, *op. cit.*
[27] Commissioner of the General Land Office, *Report*, 1899, p. 5.

PART II—LEGISLATIVE DISPOSITION OF THE PUBLIC DOMAIN OF TEXAS

CHAPTER II

LAND GRANTS TO SETTLERS

PROPERTY RIGHTS AND CHANGES OF GOVERNMENT

Vested rights in property were not disturbed by any of the changes of government that have been described in the preceding chapter.[1] The separation of Texas from Mexico constituted the division of an empire, but incipient titles to land acquired under the laws of Mexico and of Coahuila and Texas, which required further action of the administrative officials of that government to complete them, still remained subject to the action of the political authorities of the new nation. The merger of the Republic of Texas into the Federal Union as a state was a peaceful revolution, effected with the consent of the people. Consequently, laws not inconsistent with the new forms of government remained unchanged and property could be acquired, held or disposed of under them just as before. In discussing the tenth section of the constitution of the Republic of Texas, which specified the quantities of land that its citizens were entitled to receive and to hold, Mr. Baker, then a member of the Congress of Texas, said:[2] "So far from being a repeal of the colonization laws, it is a confirmation of them, and the quantities of land granted is only an extension of the liberal spirit which induced the original passage of such laws."

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[1] Sayles, *Real Estate Laws of Texas*, 1: 21.

[2] Baker, Mosely, chairman of the Judiciary Committee, *Report*, Nov. 16, 1836; *House Journals*, 1836–38, p. 155.

The state of Coahuila and Texas is claimed to have anticipated the success of the Texas revolution and to have indulged in a shameful and corrupt squandering of its public domain.[3] Several acts were passed by the legislature of that state in 1834 and 1835 which granted eleven hundred leagues (4,870,800 acres) of land to John T. Mason, of New York, and various other individuals, some of whom lived in foreign countries. The names of Mexican servants and of fictitious persons are also said to have been inserted in the grants. The Constitutional Convention of the Republic of Texas asserted that the protection of the public domain from unjust and fraudulent claims and the quieting of the people in the enjoyment of their lands was one of its greatest duties. It, therefore, declared that all claims to land based on certain acts of the legislature of Coahuila and Texas, which it enumerated, were unlawful because they were contrary to the general colonization law of Mexico which plainly specified that not more than eleven leagues of land could be united in the hands of one individual and that a non-resident could not acquire titles to land within the Republic of Mexico.[4]

The domestic affairs of the citizens of the Republic at the time of the adoption of the constitution were in a very unsettled condition owing largely to the fact that many heads of families had not returned from the army. The framers of the constitution intended that such persons should have a fair and equal chance with those who had remained at home to select their lands, and they believed that the general welfare of the people demanded that the whole land system should be suspended. Consequently, all surveys and titles that were made or issued after the adoption of the constitution were declared to be invalid unless they were directly authorized by the constitution or by future acts of congress.[5]

Soon after the constitution of 1836 was adopted, the question arose as to what effect it would have on the Mexican colonization laws. Consequently, the Judiciary Committee of the House was asked in the fall of 1836 to report on the question of what laws were in force granting lands to immigrants. Mr. Baker, as chairman, reported that all the laws of Mexico and of Coahuila and Texas not contrary to the constitution were still in force and would remain so until repealed by congress; also that the committee was of the opinion that these colonization laws were not in any way repugnant to or inconsistent with the constitution.[6] This opinion seems to have been accepted as final, although it was not at that time embodied in a statute.

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[3] Sayles, *Real Estate Laws of Texas*, 1: 448.

[4] Sayles, *Early Laws of Texas*, 1: 207.

[5] *Ibid.*

The same committee was also asked to report on the question of whether or not it would be good policy to repeal or modify these laws. In answer to this question, the committee recommended that the colonization laws be repealed insofar as their future operation was concerned, but insofar as they would affect persons who had immigrated to Texas prior to the Declaration of Independence in 1836, it thought that they should not be modified.[7] Inasmuch as there were many citizens who had acquired rights under these laws and had waited years to procure their titles, justice and sound policy, in the judgment of the committee, required that existing empresario contracts should be completed and that titles should be given to citizens resident in the country prior to March 2, 1836. The repeal of the Mexican colonization laws was brought about in the effort to establish a land system which will be set forth in subsequent paragraphs.

DEMAND FOR LAND COLONIZATION

The Republic of Texas as an independent political organization was not only financially bankrupt, but it was also seriously in need of an army and a navy to protect its frontier and to furnish the necessary police force with which to maintain order. Security of persons and property could not be guaranteed and the only way in which this bankrupt organization could command attention and hold the respect of its citizens was by means of its public lands. These it had in abundance and they were accordingly dealt out in abundance. Moreover, the free land of Texas was in competition with the public lands of the United States in Indiana, Illinois, Iowa, and Wisconsin which could be had for the small nominal sum of $1.25 an acre and in a country where the problems of government, both financial and military, were not such a serious matter. Herein lies the explanation for the large constitutional grants to citizens and headright grants to immigrants that were authorized in the legislation enacted prior to 1840. The disadvantages of land ownership in frontier Texas supported by a bankrupt and unstable government could be offset only by a quantity of land increased sufficiently to overcome the advantages and security of ownership of a smaller quantity in the United States. The early settlers and citizens of the Republic of Texas fully recognized the significance of this principle. And so by making it economically worth while for its own citizens to remain within its borders and support the government and by attracting in a similar way a rugged class of men to assist in extending and protecting its frontier, the Republic of Texas maintained its existence as a nation and exercised its authority as such until it was annexed to the United States and became a state in the Federal Union.

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[6] *Baker, op. cit.*

[7] *Ibid.*

As soon, however, as Texas became an integral part of the United States and the authority of its government was extended over the new commonwealth, the land problem assumed a new aspect. New settlers were not needed so much to increase the military strength of the government and give stability to its civil functions as they were to develop its resources and make it a prosperous community from a commercial point of view. The enhancement of land values was the immediate need of the time. Every citizen of Texas in that day had an immense quantity of land at his disposal, a quantity indeed much larger than he and his family could cultivate and use profitably. A large part of his estate, therefore, was useless and practically valueless to him unless a demand could be created for it among persons outside of the borders of the state. The Republic had been truly a nation of landowners and the new commonwealth was doubtless distinguished more than any other state in the Union by the number of its citizens who were owners of private property in land. Naturally these men devised and became efficient advocates of plans which were intended to make their property more valuable to them. The results of their efforts are to be seen throughout all the subsequent legislation which had to do with the disposition of public lands, but their most direct, immediate and perhaps most important influence is found in the aid that was rendered to internal improvement companies.

CONSTITUTIONAL GRANTS

The constitution of the Republic of Texas, which was ratified at a general election on the first Monday of September, 1836, specified that all persons who were living in Texas on the day of the Declaration of Independence (March 2, 1836) should be regarded as citizens of the Republic and should be entitled to all the accompanying privileges.[8] Negroes and Indians were expressly excepted in this provision. Moreover, all free white persons, who, having moved to Texas and having lived there six months, would take oath that they intended to reside there permanently, and that they would support the constitution and bear true allegiance to the Republic, were declared to be entitled to all the privileges of citizenship. But all those persons who left the country in order to avoid participating in the struggle for independence, or who refused to participate in it or gave any assistance to the enemy, were declared thereby to have forfeited their rights to citizenship and to such lands as they had acquired and were holding by virtue of the Mexican colonization laws.

The constitution then specified that every citizen living in Texas who was the head of a family should be entitled to one league and one labor of land (4,605 acres) and that every single man over seventeen years of age should be entitled to one-third of a league. Those citizens who, previously to the adoption of the constitution, had received only one league according to Mexican laws, or as single men, only one-fourth of a league, were also entitled to such additional quantities as would make for them, respectively, one league and one labor or one-third of a league. After having thus defined the qualifications of citizenship and having thus specified the quantities of land to which each citizen was entitled, the constitution was very explicit in stating that:[9] "The citizens of the Republic shall not be compelled to reside on their land but shall have their lines plainly marked." Aliens were prohibited from holding land in the Republic except by titles emanating directly from the government. Those aliens, however, who should acquire land by direct inheritance were guaranteed a reasonable time in which to take possession of and to dispose of such land. Actual settlers and occupants of the soil were given the right in locating their land to include their improvements in preference to all other claimants.

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[8] Sayles, *Early Laws of Texas*, 1: 205.

The Conditional Certificate Plan

The same committee which recommended the repeal of the Mexican colonization laws, as far as their future operation was concerned, also recommended the establishment of a general land system. About six weeks later "An Act to establish a general land office for the Republic of Texas" was passed, and this law evidently contains the outline and plans of such a system.[10] It was subsequently modified from time to time and its operation was even suspended, but its general principle has remained unchanged.[11] This act in reality repealed the Mexican colonization laws so far as they applied to immigrants who arrived after the Texas Revolution, for it provided a scheme by which public lands would be distributed to such persons.

Since the lands granted in this act were available only to those who arrived in the Republic after March 2, 1836, the law really established a system for distributing public lands to immigrants only, and the grants which it authorized may be rightly termed "Conditional Grants," for they were so designated in the statutes. Upon his arrival in the Republic, the immigrant was entitled to a "Conditional Certificate"[12] for certain quantities of land according to law; and when he had fulfilled all the conditions prescribed therein, he was given an "unconditional deed" to the land. These lands, together with those acquired as constitutional grants, make up most of those that are held under what are known as "headright grants."

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[9] Sayles, *Early Laws of Texas*, 1: 206.
[10] *Ibid.*, 1: 230–237.
[11] *Ibid.*, pp. 244, 249, 259–271, 296 and 456.
[12] Sayles, *Real Estate Laws of Texas*, 1: 226–8.

Any free white person who was the head of a family and who arrived in the Republic of Texas within the time specified in the law was entitled to a "conditional grant" of 1,280 acres. If the immigrant was a single man, he was entitled to 640 acres on the same terms. The conditions were that the grantee should remain and permanently reside within the Republic and do and perform all the duties required of other like citizens for a period of three years. The board of land commissioners was directed to issue to this class of claimants a certificate for their claims as soon as proof, which would show the amount of land located and the time of arrival within the Republic, was offered in the same manner as required of other claimants. Subsequent laws were passed which enabled all immigrants who arrived within the Republic before January 1, 1842, to acquire land in accordance with this method, except that the size of the tracts was reduced to 640 and 320 acres. The last of these acts modified the conditions of the grant to the extent that the claimant must reside on the land three years and cultivate at least ten acres, but even this clause was repealed February 4, 1842.[13]

Thus did the Republic of Texas freely distribute its public lands to its citizens and to its immigrants and virtually become a nation of landowners.

IMMIGRATION CONTRACTS

Although the Republic of Texas had freely given lands to all its citizens and immigrants and even offered large quantities as payment for military services,[14] the government still felt the need of a larger and more thrifty population. Men, rather than lands, were what was needed in those days of conflict with Mexico and with roving bands of Indians. Texas needed active and industrious men to occupy its vacant lands and thereby make valuable those already in cultivation; the infant nation also needed fighting men to help protect its frontier settlements.

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[13] Sayles, *Early Laws of Texas*, 1: 512.

[14] See Bounty and Donation Warrants, on page 76.

In order to get them, it sought to enlist the aid of capitalists in introducing and settling upon the vacant and unoccupied domain families and single men from other countries.[15] This necessity gave rise to a great deal of legislation which authorized the President to make contracts with immigration agents and companies for the introduction of the much desired settlers. In principle this method of colonization was identically the same as that of the empresario system of Mexico and differed from it only in matters of detail. Thus it will be seen that the principle of Austin's contract, in accordance with which he sought to introduce his colony and for which he so successfully contended with all the conflicting changes in the Spanish and Mexican governments, was destined to have no little part in the colonization of the state.

By virtue of an act of 1841 the President was authorized to contract with W. S. Peters and his associates, who afterwards organized the Texas Emigration and Land Company, for the introduction of a number of families which should be specified in the contract.[16] In 1842 he was authorized to make similar contracts with other companies,[17] and accordingly such were made, particularly with Henry Castro, Charles F. Mercer, and the German Emigration Company. Generally speaking, the colonists were entitled to a section of land and every single man over seventeen years of age was entitled to one-half section. Each settler, however, was required to build a cabin on his land and to keep in cultivation and under good fence fifteen acres before a title could be received for it. On the other hand, the contractors were required to have the land within the designated limits of the colony surveyed into sections and half-sections of which the alternate sections were to remain the property of the Republic. In addition to this they were required to pay the expense of surveying. This expense was to be repaid to the contractor by the colonists, but a claim for it never could become a lien on their land. The contractor was also required to supply each colonist with a gun and ammunition.[18] He was permitted to agree to pay the expenses for the removal of the colonists to Texas in return for which a portion, not exceeding one-half, of the colonist's land might be conveyed to him. In return for their services, contractors were entitled to receive ten sections of land in the nature of a premium for every one hundred families introduced. If one-third of the entire number of colonists contracted for were not introduced within one year, the premium lands would become forfeited, but the rights of the colonists would not be thereby affected.

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[15] Sayles, *Real Estate Laws of Texas*, 1: 182.
[16] Sayles, *Early Laws of Texas*, 1: 457.
[17] *Ibid.*, p. 515.

Other laws were subsequently passed which authorized the president to make additional contracts with W. S. Peters and his associates and to extend the time for the introduction of colonists to 1848.[19] But by 1844 the tide had changed. Congress repealed all the laws authorizing the President to make colonization contracts and required him to forfeit all those that had not been strictly complied with.[20] President Houston vetoed this bill because he believed it impaired the obligation of existing contracts with which the Republic had no right to interfere. In his veto message he said:[21]

> "The contractors for the settlement of our vacant domain have not yet had time to perfect their respective contracts, and before a fair experiment of the policy of this mode of settling the country is made, it should not be condemned. The dignity, as well as the interests of the nation, requires, as the executive believes, a strict fulfillment of all its pledges. If individuals are not protected in their just rights, it will be utterly impossible that any confidence should exist."

Regardless of his veto, however, Congress passed the bill with a constitutional majority which repealed these contract laws.

A period of litigation and special legislation began immediately after the repeal of the contract laws in which an effort was made to determine the rights of the colonists and of the contractors to lands which they claimed by virtue of these laws. Many of the contracts were forfeited either by acts of Congress or decisions of the court, but, generally speaking, rights of colonists were fully protected from the penalties attached to the non-compliance with the contract by the immigration agent or company which introduced them.[22]

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[18] Sayles, *Real Estate Laws of Texas*, 1: 183.

[19] Sayles, *Early Laws of Texas*, 1: 525.

[20] *Ibid.*, p. 537.

[21] Houston, President Sam, *Veto Message*, January 10, 1844, in *Senate Journal*, p. 99.

PREEMPTION CLAIMS

Preemption may be defined as a method of selling public land to actual settlers by private contract on a credit basis. A nominal minimum price for the land, together with certain conditions of residence, cultivation, and payment of the purchase price, are specified in the law. A settler is presupposed to have located on a piece of land which he believes to be vacant and which he desires to purchase in accordance with the provisions. The right of preemption, then, protects him against all other claimants in the purchase of this particular piece of land according to the terms that have been prescribed in the law. Preemption is, therefore, a private sale because it admits of no competition; the first man to occupy a piece of land subject to preemption has a preference right to buy it. The essential conditions of the contract are bona fide residence and actual cultivation. Preemption is also a credit sale because the purchase price is usually not payable until the other conditions of residence and cultivation have been fulfilled. It differs from other credit sales in that no interest is charged.

The right of preemption has also been described in the following terms:[23]

> "Preemption originated in the necessities of the settlers. It is not a free grant of land, but a privilege granted to a settler in purchasing a tract of land as against other competitors. It amounts simply to the

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[22] For citations to these laws and cases in which they have been interpreted, see Sayles, *Real Estate Laws of Texas*, 1: 181-207. In this connection the case of *Preston vs. Walsh*, 109 U. S. 297, is a very interesting and illuminating one because it contains a good review of the colonization laws of Texas and a statement of the interpretation placed upon them by the United States Supreme Court. The opinion of the Court by Justice Miller and the dissenting opinions by Justices Harlan and Field clearly set forth the controverted views. The case involved the enforcement of Mercer's contract for the establishment of a colony of immigrants in Texas. The Court held the contract to be of doubtful validity and void because of non-compliance.

[23] Sato, Shasuke, *History of the Land Question in the United States*, Johns Hopkins University Studies, 4: 417.

> exclusion of competition, and the purchase of land at a minimum or a double minimum price, as the case may require."

The origin, purpose and general results of this system in the United States have been set forth in the following significant statement of the Public Land Commission.[24]

> "The preemption system was the result of law, experience, executive orders, departmental rulings and judicial construction. It has been many-phased and was applied by special acts to special localities, with peculiar or additional features, but it has always contained, even to this day, the germ of actual settlement, under which thousands of homes have been made, and lands made productive, yielding a profit in crops to the farmer and increasing resources to the nation."

Preemption never had the historical setting in Texas that it had in the United States. It was a fully developed principle of land legislation when it was first enacted in the land laws of the Republic and of the new Commonwealth. In fact the principle probably was borrowed directly from the United States, especially since the first preemption law of any importance in Texas was passed within four years after this method of disposal had been incorporated into the general land system of the federal government. The enactment of such legislation was the result of a general sentiment prevailing in Texas at that time to the effect that a law which would prevent any other mode of acquiring a right to lands than by occupancy would be a strong inducement to those who wished to cultivate their lands to settle upon them and thereby give to the frontiers, where it was most needed, additional strength.[25]

The payment of a purchase price in the preemption system of Texas was not such an important consideration as in the United States. For the most part, lands could be acquired for fifty cents an acre. Settlement and cultivation were the central features. The adoption of the preemption and homestead principles of land settlement marked the relaxation of the government from those aggressive methods of direct colonization embodied in the laws authorizing headright grants and immigration contracts and the assumption of a more passive attitude toward this subject.

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[24] Donaldson, *op. cit.*, p. 215.

[25] House Committee on Public Lands. *Report*, published in *Houston Telegraph and Texas Register*, 1839.

Within thirty days after the settler had moved upon a piece of land, he was required to file with the surveyor of the county or district in which the land was situated, a sworn written application which would designate the land that he wished to claim. The application also stated that he claimed the land for himself in good faith; that he did not own 160 acres of land in the state; that he had no other residence on land of his own; that he had actually settled upon the land which he claimed; and that he believed it to be "vacant and unappropriated" public domain. Failure to make this application would forfeit all rights to claim the land. This application served as a notice to the surveyor to survey the land and keep a record of the claim. Usually a preemptor could not claim more than 160 acres, though under the law of 1845 he might claim 320. The privilege of preemption, together with the improvements, could be sold to another actual settler and occupant. As soon as the assignee had completed the requirements of the law, he was entitled to the patent just as the original claimant would have been. When the preemptor, or his assignee, had completed a residence of three years on the land, he was required to present an affidavit to that effect from two respectable witnesses and pay such dues and fees as were required by law, whereupon a patent would be issued to him. Details of the law were changed from time to time, but the principle remained unaffected. With the exception of four years intervening February 13, 1854, and February 10, 1858, land could be acquired in Texas by right of preemption from 1845 till 1889. At the last mentioned date all preemption laws were repealed.[26]

HOMESTEAD DONATIONS

Generally speaking, a homestead may be defined as a free grant of land to an actual settler upon the fulfillment of certain conditions of residence and cultivation. Usually the land has been surveyed by the government before it has been opened for settlement, but if not, it would be upon application. The privilege of acquiring land in this way has been regarded throughout all homestead legislation in America as a civil right of every citizen who does not own land. *Bona fide* occupation and cultivation of the soil are both the essential terms of the grant and the purposes for which the grant is made. A homestead, therefore, is not a sale of land in any sense; it is an absolute donation. The principle of "commutation of homestead entries," however, is a characteristic feature of the homestead laws of the United States. This principle authorizes the settler to purchase his homestead for a nominal price at the expiration of a certain period of residence in lieu of the remaining residence requirements. Another feature of this legislation well worthy of special emphasis is the exemption of homesteads from obligation for debt contracted prior to the issuance of the patent.

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[26] For a brief review of the preemption laws of Texas and citations to separate acts, see Sayles, *Real Estate Laws of Texas*, 1: 288–301.

The following eulogy of the Homestead Law of the United States has been made by the Public Land Commission. It is a significant statement that is worthy of repetition here because it shows the origin and purpose of this sort of legislation.[27]

> "The Homestead Act is now the approved method of acquiring title to public lands, . . . and was the outgrowth of a system extending through nearly eighty years, and now, within the circle of a hundred years since the United States acquired the first of her public lands, *the Homestead Act stands as the concentrated wisdom of legislation for the settlement of the public lands.* It protects the government; it fills the state with homes; it builds up communities and lessens the chances of social and civil disorder by giving ownership of the soil, in small tracts, to the occupants thereof. It was copied from no other nation's system. It was originally and distinctly American and remains a monument to its originators."

From an historical point of view homesteads in Texas can hardly be spoken of as the "concentrated wisdom of legislation for the settlement of public lands." The germ of the homestead donation system is found to have been established in Texas twenty-five years before the passage of the Homestead law in the United States, and it had undergone a process of enlargement and development throughout all that period before the principle was adopted as an integral part of the land system of the United States. The laws of the nation and of the state are almost identical in principle; but one probably cannot correctly be said to have been copied from the other, for each was adopted as the result of a different set of political and economic forces. Politically the Homestead law in the United States is said to be a measure that was adopted to prevent the retrocession of government lands to the states and thereby to prevent the spread of slavery; economically it is a measure that was adopted to better the conditions of free labor.[28] In the beginning the homestead law of Texas was a measure of expediency adopted to encourage settlement along a military road.[29] This was in 1838. In 1845 the scope of the law was enlarged and in 1854 a more general law was passed. Since 1866 every citizen of the state has had a constitutional right to a homestead so long as any public land remained subject to individual appropriation and settlement. Consequently the legislature was stripped of its power to repeal the homestead law, but the Supreme Court of Texas has recently held that there is no longer any vacant public land in the state subject to homestead entry.[30]

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[27] Quoted by Sato, *op. cit.* p. 435.

The usual size of a homestead in Texas is 160 acres, though some homesteads of larger size have been acquired. The general conditions of the donation have been that the claimant select, locate and occupy the land for a period of three years and pay the office fees on the same. As soon as these conditions are

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[28] Sato, *op. cit.* pp. 428–434. Even if the Homestead Act was not adopted for the avowed purpose of preventing retrocession of land to the states, it was intimately bound up with the slavery issue and its passage was successfully prevented for a long series of years by the representatives of southern states who opposed it for political reasons. Mr. John Bell Sanborn, writing in the *American Historical Review* (vol. 6, pp. 36–37), says: "The advocate of state-sovereignty and strict construction saw in the homestead act an increase in the power of the general government and therefore gave his aid to its defeat. To the Know-Nothing it was an inducement to foreigners to come to our country and bring with them subservience to the Pope. And, strongest opponent of all, the slaveholder saw that free homesteads meant the rapid settlement of the lands by the people of the North and the passing of the territories from his hands forever. He found himself defeated in the struggle for Kansas even without the homestead law to aid the Northern emigrant; with it, he saw, the North would be invincible. With all this powerful opposition is it any wonder that bills which benefited directly only a class of citizens having little political influence should have waited so long to become law?"

[29] For a brief review of the homestead donation laws and citations to the separate acts, see Sayles, *Real Estate Laws of Texas*, 1: 302–313.

[30] *Hogue vs. Baker*, 93 Texas 58, 1898.

complied with, a patent is issued. The principal differences in securing a homestead under the laws of the state and of the nation are that in the United States the settler is required to live on his land five years[31] instead of three years as in Texas, and also that he is given greater privileges of "commutation" there than in Texas. Another distinction of no little importance is found in the fact that homesteads acquired and held under the national law are exempt from seizure for debt only so long as they have not been patented. As soon as a patent has been issued, they become subject to the homestead exemption laws of the state in which they are situated. In Texas the exemption is just the same after the issuance of the patent as before. So long as the land remains in the possession of an owner who acquired it as a homestead donation, it is exempt from all claims of private indebtedness except for work and materials used in constructing improvements when such work and materials were contracted for in writing with the consent of the wife. This principle of homestead exemption is claimed to have originated in Texas and doubtless has had a more complete development and more extended application there than in any other state in the Union.[32]

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[31] Has been changed since the above was written to three years.

[32] Sayles, *Civil Statutes of Texas*, 1897, 1: 936-7 and 947; see also an article on *Texas Homestead Laws* in *The Texas Review*, 1: 372-376, February, 1886.

CHAPTER III

LAND GRANTS TO INTERNAL IMPROVEMENT COMPANIES

STATE AID TO INTERNAL IMPROVEMENTS

Soon after Texas became an integral part of the United States and as such still retained the power to dispose of the public lands within its borders, the state committed itself to the encouragement of an extensive system of internal improvements. At that time these public lands were the only means at its disposal for carrying out such an ambitious program. Consequently, they were granted in exceptionally large quantities and on easy terms to private corporations, which, in turn, agreed to construct and operate the desired improvements. In a later period of its development the state became the custodian of large funds accumulated from the sale of the lands that had been set apart for the benefit of the public schools. Then the plan was conceived of lending these funds particularly to railway companies in addition to the land grants in order to aid them in an immediate construction of the contemplated lines.[1] Thus the public lands of Texas were used directly and indirectly to stimulate a rapid and an extensive development within the state of great productive enterprises under private ownership and management.

SCOPE OF THIS LEGISLATION

The whole program for the encouragement of these internal improvements included donations of land for the construction of railways, the building of steamboats, the improvement of rivers for navigation, the digging of canals and ditches for irrigation, the boring of artesian wells, and the erection and operation of certain manufacturing industries.[2] Grants of land were made at various times for all these purposes and were authorized both under general law and by special acts. In general, this legislation was prompted by legitimate motives, but a very large part of it only made possible the growth of gigantic schemes of speculation and fraud which in the end brought about an enormous waste of the public domain.

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[1] Sayles, *Early Laws of Texas*, 2: 378 and 419; Potts, Charles S., *Railroad Transportation in Texas* gives a good brief account of these loans, Bulletin of the University of Texas, No. 119, pp. 89–92.

Economic Demand for Such Assistance

The agitation for a system of internal improvements was a concrete expression of the demand for the immediate enhancement of land values that was discussed in the preceding chapter. This demand was composed of two important elements: first, the want of a more extended market for agricultural produce which was the chief asset of this far-away state; and second, the need of a rapid growth in population within the borders of the new commonwealth. Increased transportation facilities and the establishment of new industries within the state would satisfy the first want. Moreover, the construction and operation of railways would fulfill the second one, for the railway companies would be forced as a matter of self-interest to bring immigrants into the state, not only to develop traffic for their lines but also to enable them to sell their lands which they were required to dispose of within a limited time. The demand for railway building was also particularly forceful because it was argued that in addition to the opportunities it would afford for increasing the value of lands already held by private owners the occupancy of railway lands would make the alternate sections reserved to the state, and which lay immediately adjacent to them, more desirable and valuable. The enhancement of land values, therefore, constituted an economic demand for which a system of internal improvements seemed to offer an effective means of satisfaction and to which the state responded in a most liberal and beneficent manner.

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[2] Sayles, *op. cit.* 2: 333, 430, 546, and 556; also 3: 281, 286, 306, and 317.

EARLY AGITATION FOR LAND GRANTS TO RAILWAYS

The system of railways that was first contemplated in Texas consisted of two important parts: first, a network of intrastate roads which would afford a means of communication and transportation within the state and to the Gulf; and second, one grand trunk line extending from near Fulton, Arkansas, on the east to El Paso on the west which would eventually become a part of a continuous transcontinental railway system and which would thus make Texas tributary to a great national highway to the Pacific coast. The effort to secure and assist in the construction of this railway of "national importance" really preceded the agitation for a general plan of land donation, but it involved a long series of special legislative acts, whereas the aid rendered to the shorter roads was for the most part granted under general law.

As early as 1850 it was thought that the United States government might undertake to build a national road to the Pacific coast. By joint resolution on February 9, of that year, the Texas Legislature authorized the United States government to build such a road from some point on the Gulf of Mexico or the Mississippi River through the limits of the state.[3] This resolution guaranteed a right-of-way 200 yards wide throughout the state and assured the federal government that all reasonable and proper facilities and cooperation in the construction of such a road would be extended to it. It also specified that all public lands lying within ten miles of each side of the right-of-way should be surveyed into sections of six hundred and forty acres each and that the alternate sections, in addition to the land within the right-of-way, should belong to the United States government on condition that it accept this proposition before March 4, 1851. In case the construction of the road was not undertaken or some other route selected by that time, the resolution would cease and have no effect.

The joint resolution of 1850 was the result of a general agitation throughout the South and particularly in Louisiana and Texas for a national road to the Pacific coast over a southern route.[4] The members of the Texas Legislature believed that a large grant of land would be a strong inducement for the selection of the route and the construction of the road through their state. The report of the Senate Committee which recommended the passage of this resolution recited that it was the constitutional power and the duty of the United States government to construct such a road for commercial and military reasons.[5] Climatic conditions, it said, favored the southern route, but the United States could not build the road without assistance. The committee argued that the donation of these lands would be a great material advantage to the state, for the road would pass through it for a distance of six hundred miles and through a portion in which most of the lands were then unappropriated and unsettled. Without the construction of this road, the public lands through which it would pass must of necessity remain nominally valueless to the state for years to come. Consequently the committee assumed that one-fourth of these lands would be worth more with the road running through them than the whole would without the road, and it asserted that it believed this assumption would not be contradicted by any one. Moreover, it was estimated that the quantity of land thus set apart for this purpose would amount to 2,560,000 acres, which, at the rate of two dollars an acre, would be equivalent to a donation to the federal government of $5,120,000, or more than enough to pay half the cost of constructing the road through the state.

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[3] *Ibid.*, art. 2041; Gammel, *op. cit.* 3: 589.

In concluding its remarks in favor of the resolution, the report of the committee says:

> "What will Texas have gained if she takes this course and the road is then not made? She will have shown to her sister states of the Union that she considers the construction of this road of vital importance to the prosperity and welfare of the whole mass of the citizens

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[4] See an account in the *Texas State Gazette*, January 24, 1852, of a railroad convention at New Orleans for which the purposes are stated to be: "Not to build roads or digest charters for companies to build roads, but the aim is to consolidate and unite public opinion in the South upon a general system of railway communication, connecting and blending every portion of the South and Southwest in close harmony—a system of which New Orleans shall be the grand center."

[5] Robertson, J. B., Chairman of the Senate Committee, *Report*, published in the *Texas State Gazette*, January 12, 1850, p. 165.

of this mighty Republic, if not to the preservation of the Union itself; and that she, having the means within herself, had the foresight and liberality to step forward and tender with a younger sister's love of the family union the means for constructing the road for more than half its length to our federal head."

No advantage was taken of this offer, however, by the national government and it therefore expired by its own limitation.

The report of the senate committee and the subsequent action on the joint resolution which it recommended doubtless are fairly representative of the attitude of the public mind toward the railway problem of 1850. The failure of the federal government to act under these circumstances could only accelerate discussion and crystallize the popular demand for substantial assistance to railway building. Consequently a convention of delegates from twenty-two counties met in Austin, November 17, 1851, to discuss the subject of railways.[6] Among its delegates were such noted men as I. A. Paschal, O. C. Hartley, J. M. Crockett, David C. Dickinson, John W. Dancy, and G. W. Paschal; men whose names are very familiar to the student of Texas politics and jurisprudence of that time. The convention remained in session ten days. The *Texas State Gazette* says that its proceedings were characterized by much spirit and that much information, statistical and otherwise, was elicited from the discussions. Judge Paschal, from the committee and in behalf of its chairman, read a lengthy and able report which proposed that the state should work out an extensive scheme of internal improvements and should furnish liberal aid to private corporations for their construction and operation. At the close of his report he offered resolutions recommending that the legislature be requested to submit the following propositions to a vote of the people: first, that $3,000,000 be set aside as an internal improvement fund; second, that the building of railways within the state be encouraged by a loan of one-third of their cost, in installments of money as the roads progress by sections of ten miles, retaining a lien in preference to all others, in the roads, fixtures, engines, and other equipment to secure the reimbursement of the principal and interest at the rate of five per cent; third, that 5,000 acres of land scrip be issued as a bounty for each mile of every ten miles of approved road constructed in the state; and finally, that a railway running nearly through the heart of the state from the eastern to the western boundary should be encouraged by a liberal charter and donation of land. After an extended discussion, in which Messrs. Gordon, Payne, Taylor of Harrison, Neill, Paschal, Wilson, Eddy, Neighbors, Hunt and Scott participated, the resolutions were adopted and a committee of five selected to memoralize the legislature. The committee consisted of I. A. Paschal of Bexar county, George W. Smith of Jasper, L. C. Clopton of Smith, A. M. Lewis of Washington, and A. H. Marshall of Gonzales.

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[6] See the *Texas State Gazette*, December 6, 1851, p. 153.

The session laws of 1852 do not show that the propositions set forth in the preceding paragraph were submitted to the vote of the people or that any action was taken on them during that session of the legislature. Nevertheless they were all enacted into law within the next five years though the details of their provisions were greatly modified and the assistance offered was somewhat reduced. The legislature of 1852 did charter nine railway companies, each by special act,[7] and granted to each one eight sections of land for each mile of completed road.[8] This sort of legislation, however, was unsatisfactory for two reasons: first, the roads were not being built and could not be built with the amount of funds which companies could obtain on eight sections of unimproved land; and second, it was special legislation, that is, the legislature had adopted a method of creating a particular company by a separate and individual act to construct and operate a particular piece of road. Although a uniform quantity of eight sections to the mile was granted to each of these companies, such legislation did not meet the popular demand for a general system of land donations. It required that companies be organized and that application be made for a charter before any assurance could be given that the company would receive any aid from the state, whereas a general system of land donation would afford a standing offer of a definite quantity of land which would serve as an inducement for the organization of companies to construct desired lines. So the discussion and agitation went on.

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[7] These charters were granted to the following named companies: *Special Laws of Texas*, 1852.

1. Ch. 75, p. 68, Buffalo, Brazos & Colorado R. R. Co.
2. Ch. 109, p. 97, Henderson & Burkville R. R. Co.
3. Ch. 146, p. 130, Texas Central R. R. Co.
4. Ch. 147, p. 136, Texas & Louisiana Central R. R. Co.
5. Ch. 148, p. 142, Galveston & Red River R. R. Co., supplementary to an act March 11, 1848.
6. Ch. 152, p. 160, San Antonio Ry. Co., supplementary to Act of September 5, 1850.
7. Ch. 192, p. 183, Texas Western R. R. Co., (See also ch. 214, p. 220).
8. Ch. 195, p. 197, Vicksburg & El Paso Railroad Co.
9. Ch. 201, p. 205, Brazos & Colorado R. R. Co.

[8] A number of companies had been chartered previous to this time. The Harrisburg & Brazos seems to have been the first one actually to have begun construction. This was in 1840. The Buffalo, Bayou, Brazos & Colorado, chartered in 1850, had completed twenty miles by August 1, 1853. This event was celebrated by a barbecue at Stafford Point. Potts, Charles S., *op cit.*, pp. 23–36.

After the adjournment of the legislature in 1852, a lively interest in the subject was excited and maintained throughout the state. Public meetings and conventions were held at various points and at all of them there was a decided expression of opinion in favor of some liberal and enlarged system, having for its object the connection of the various points of the state by a rapid mode of inter-communication. Finally the question became an issue in the state campaign of 1853, and members for the succeeding legislature were chosen with reference to their attitude toward this problem. Commenting editorially on the situation, the *Texas Gazette* says:[9]

> "We have observed closely the announcements for the Legislature made in the various parts of the state and so far as declarations are given, every candidate yet in the field is in favor of internal improvements upon some plan or other. This is a pretty plain indication of public sentiment and bodes much good to the state, if carried out at the polls in August."

The result was the law of January 30, 1854.

THE GENERAL LAW OF 1854

The law containing the general plan of land donation as it was finally worked out was entitled, "An Act to encourage the construction of railroads in Texas by donations of land."[10] It granted to any railway company within the state sixteen sections (10,240 acres) of land for every mile of road constructed and put in running order on condition that the company complete a section of twenty-five miles or more. When the company had twenty-five miles of its road under contract and had filed a bond of $10,000 with the state treasurer to insure the survey of the land and the completion of the contract, it might also file with the Commissioner of the General Land Office an application which described specifically the lands applied for and intended to be surveyed. Such application might apply to any portion of the public domain subject to location and entry, but it could not include more than 800 sections. The lands so designated would then be exempt from any future location, entry or preemption privilege until otherwise directed. The railway company was required to survey the land at its own expense into sections of 640 acres each and to file in the General Land Office the field notes and a map or maps on which the odd and even sections were differently colored and regularly numbered. When the road had been completed and put in running order, the Governor was directed to appoint a "skillful engineer" who should examine it, and upon his report that the road had been completed according to the law the Commissioner of the General Land Office was authorized to issue patents for the odd sections surveyed according to this act. Furthermore, the railway companies were required to sell the lands which they acquired in this manner within twelve years in the following proportions: one-fourth in six years, one-fourth in eight years, one-fourth in ten years, and the remainder by the end of the twelfth year. In later years, however, this time limit was greatly extended. The land could not be sold to any other corporation except for such purposes as might be necessary for carrying on the business of the railway. Companies thus entitled to a grant of land would forfeit their privileges unless the first section of the twenty-five miles was completed within two years after the passage of the act. The privileges would be discontinued if an additional section of the road as contemplated by the charter was not finished each year after the completion of the first twenty-five miles. The act also provided that lands could not be donated unless the rails used should weigh at least fifty-four pounds to the yard.

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[9] *Texas State Gazette*, April 30, 1853.

[10] Sayles, *Early Laws of Texas*, 2: 326; Gammel, *Laws of Texas*, 3: 1455.

Numerous changes were made in the detail of the law in subsequent years. The time for the completion of contracts was frequently extended and a large number of acts for the relief of particular companies were passed in order to prevent them from forfeiting the privileges and rights they had acquired under the act, but the general principles set forth in it were steadfastly adhered to as long as the state had any lands to donate, except for a brief period of four years, from 1869 to 1873. During this time, the law of 1854 and all of its amendments were repealed by the Constitution of 1869, and the whole donation system was thereby suspended.[11] In 1873 the Constitution of 1869 was amended so that the legislature was authorized to grant lands not exceeding twenty sections to the mile for the encouragement of railway building, and the principle of land donations for internal improvements was thereby re-enacted.[12] The same principle was embodied in the Constitution of 1876, (Art. XIV, sec. 3) but the legislature was restrained from granting more than sixteen sections to the mile and from making a reservation of the public domain for the purpose of satisfying such grants. The details of this legislation were elaborated in the acts of subsequent legislatures.[13]

OTHER PLANS BEFORE THE LEGISLATURE

A number of plans for using lands to encourage railway building and other internal improvements, other than the one embodied in the law of 1854, were presented to the legislature. Perhaps the most important of these was the "State Plan" which contemplated a system of internal improvements to be undertaken and conducted by the state with money raised on the sale of its bonds.[14] The accruing interest on these bonds was to be paid by a direct tax on the people of the state until a sufficient amount could be realized for that purpose from the sale of the public lands or from the profits on the works themselves. One of its strongest advocates was Governor E. M. Pease. The disastrous consequences that had attended similar undertakings in New York, Pennsylvania, Indiana and Illinois were used very effectively by the committee on internal improvements in the Texas Legislature to defeat this project.

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[11] Attorney General, *Brief* in *Davis vs. Gray*, 16 Wal. 203, 1872.

[12] Sayles, *Real Estate Laws of Texas*, 1: 251.

[13] Sayles, *Early Laws of Texas*, 3: 449.

[14] Throckmorton, J. W., Chairman House Committee on Internal Improvements, *Report*, House Journals, 6th Legislature, p. 405.

Another plan no less novel than impractical, but which for a time seems to have had some strong support, was the so-called "Iron Policy."[18] This scheme contemplated the setting apart of all the money, stocks, bonds and other evidences of debt or cash on hand then in the treasury and not otherwise appropriated and 75,000,000 acres of public land as a permanent school fund. The management of this property was to be entrusted to a board of internal improvement commissioners elected by the people. The land was to be sold and $200,000,000 was to be invested in railroad iron which was to be lent to three main trunk lines. Tolls were to be charged by the companies sufficient to pay six per cent interest on the amount loaned after deducting expenses. The most essential feature of the plan, therefore, was that the state should purchase and lend to the railway companies a quantity of iron sufficient ultimately to cover 4,000 miles of road.

This bill was reported unconstitutional by the committee because it provided for the continued ownership of the iron by the state. This was in direct violation of that provision in the constitution which said: "The state shall not be a part owner in the stock or property belonging to a corporation." In general, the committee objected that this plan presented the outlines of a most stupendous combination of systems that could not be reconciled with the constitution or with the ordinary rules of prudent legislation. Consequently, it failed to obtain sufficient support to enact it into law.

EFFORTS TO SECURE A TRUNK LINE

Side by side with the general system of land donation prescribed in the law of 1854, a mass of special legislation was enacted which chartered particular companies and granted them immense tracts of land in order to obtain the construction of a continuous line across the state. Since the joint resolution of 1850 had failed to induce the federal government to locate and construct the desired trunk line, the legislature in 1853 conceived the idea of creating an enormous "Reserve" of the public lands and of inducing a private corporation by similar, though larger and more attractive, donations within this reserve, to undertake the same enterprise. This legislation gave rise to what is known as the "Mississippi and Pacific Reserve."

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[18] *Ibid.*, pp. 408-9.

The act having this object in view "appropriated and set apart to any company or companies" that would undertake the construction of this road twenty sections of land for each mile of road completed and put into operation.[16] It also guaranteed to such a company the right-of-way three hundred feet in width through the public lands of the state along the entire length of the road. In addition to this, it authorized the company to hold and enjoy for the uses of the road, not only for construction, but for equipment as well, all the earth, stone, timber and other material of whatsoever character and description on the public lands so long as they should remain the property of the state, except that the timber on the alternate sections reserved to the state could not be used. To satisfy any and all claims to land which might arise from the grant for this purpose, the Act reserved all the vacant and unappropriated land belonging to the state, which lay within certain designated parallels of latitude and degrees of longitude; in other words, a strip of land which extended clear across the state from east to west, the width of two degrees of latitude. This immense tract of land was not subject to location or entry by any other form of genuine land certificate until the road had been surveyed. When this had been done, the limits of the Reserve were to be withdrawn to within thirty miles on each side of the right-of-way, so that a strip of country sixty miles wide and the entire length of the proposed line would be reserved from settlement until the road was built, the land surveyed into sections, and the railway land patented according to law.

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[16] Sayles, *Early Laws of Texas*, 2: 386.

All locations, rights and claims to land within this reservation and under any form of genuine land certificate which had been acquired previously to the passage of the act in 1853 were not prejudiced in any way by this reservation. Any right so acquired could be perfected into a legal title in accordance with the general laws under which they had been secured.[17] But when any one who had acquired such a prior right or equity to land failed to perfect it within the time and in the manner prescribed by law, he forever lost his right thereto. Efforts were made to maintain rights once acquired but subsequently lost in this way. The light in which this reservation was considered, however, from the standpoint of the state administration is well shown in the language of Chief Justice Moore of the Texas Supreme Court when he said:[18]

> "It may be said that the law making this reservation was enacted for the benefit of a private corporation, and hence it is not a statute of which the court can take judicial notice. We think it may well be doubted whether any part of this law can be regarded as a private act, which does not come within judicial notice. Certainly portions of it, and especially that portion making the said reservation, legislates upon subjects of general interest and affects the rights of the people of the state at large, and must, therefore, be held to be public and general legislation in this particular, as much as if no private object were embraced in the law."

The act creating the Mississippi and Pacific Reserve also made it the duty of the governor to advertise in such newspapers as he might select, not exceeding twelve in number, and thus invite bids and proposals for the construction of this road. As soon as practicable thereafter he should select from the proposals so made the one which in his judgment, under all circumstances, offered the strongest assurances and guaranties that the road would be promptly and substantially built throughout its whole extent, and to enter into a contract for the construction and maintenance of a road equal at all times and in all respects to any other of the first class when thoroughly organized for business. Moreover, this contract when so entered into, was declared to be the charter of what should be known as the Mississippi and Pacific Railroad Company of which the contractors automatically became the incorporators. The charter was good for a term of ninety years and carried with it all the power, immunities, rights and privileges necessary to carry into full effect the provisions of the law.

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[17] Sayles, *Real Estate Laws of Texas*, 1: 258.

[18] *Woods vs. Durrett*, 28 Texas 429, 436, 1866.

The company thus created was authorized to form connections with other companies "for the purpose of effecting the desirable and national object of constructing a continuous and national railway from the Mississippi river to the Pacific ocean." The companies so united, by agreements properly entered into and recorded in the office of the secretary of state, were to be regarded as one corporation, with all the rights necessary to accomplish the object. The only assurance required of the incorporators was a deposit of securities to the amount of three hundred thousand dollars as a guaranty that at least fifty miles of the road would be built within eighteen months after the date of the contract.

In pursuance of these provisions a contract was entered into by the governor and a number of men who agreed to construct the Mississippi and Pacific Railroad. But the deposit offered by the contractors as required by law was not approved and the contract was declared by state officials to have been forfeited. Nevertheless, sufficient authority had been attached to it, that the Atlantic and Pacific Railroad Company, a New York corporation, by virtue of certain transfers of railway charters and stock connections which it had negotiated and established, set up a claim to 43,000,000 acres of land in Texas, and asserted that in consequence of the prior rights and locations already held by it no other company could safely proceed under the state charter.[19]

In the meantime the Memphis, El Paso and Pacific Railroad Company was granted a new charter in 1856 and authorized to construct the road contemplated by the Act of December 31, 1853.[20] Other companies had been chartered whose rights and privileges were in apparent conflict with those of the Memphis, El Paso & Pacific Company but this road was authorized to connect with any other road chartered by the state and running in the general direction of El Paso. The subsequent barter and traffic that was carried on with these conflicting charters and overlapping reserves brought about almost endless delay in the actual construction of the road. Finally the roads of the various small companies were consolidated into the lines of the Southern Pacific Company and of the Southern Transcontinental Company, both of which were purchased by the Texas and Pacific Railroad Company in 1873.[21] The Civil War also intervened and retarded the movement so that almost twenty-five years had passed before the desired road was actually constructed and put in operation under the management of a responsible corporation as one continuous line of railway adjusted and adapted to the needs of the traffic.[22]

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[19] Pease, Governor E. M., *Veto Message*, Senate Journal, 6th Legislature, p. 17; see also Senate Committee on Internal Improvements, *Minority Report*, Senate Journal, 6th Legislature, pp. 101–102.

[20] Sayles, *Real Estate Laws of Texas*, 1: 254-5; for a brief account of the construction of this line, see also Potts, *op. cit.* pp. 32–3 and 52–3.

CONSTITUTIONALITY OF RAILWAY LAND GRANTS

The reservation for the Memphis, El Paso and Pacific Railroad Company, which was one of the companies chartered to build the much desired trunk line, lay within the old Mississippi and Pacific Reserve which was at that time intact. But a few days after granting the charter and reservation to this company, the legislature opened the Mississippi and Pacific Reserve to location and sale, and on March 1, 1857, it became subject to location the same as other public domain.[23] The commissioner of the general land office was also authorized to sell land scrip which could be located within the reserve. Moreover, the constitution of 1869 provided that all public lands which had previously been reserved for the benefit of railways or railway companies should thereafter be subject to location and survey by a genuine land certificate.[24] Accordingly individual land certificates covering nearly twenty thousand acres had been located in the reserve, were situated on lands claimed by the railway companies, and were about to be patented by the commissioner of the general land office.[25] This was the signal for a legal battle between the state and the railway companies which was finally ended by the decision in the case of *Davis v. Gray* in the United States Supreme Court.[26]

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[21] Sayles, *Real Estate Laws of Texas*, 1: 254–5.
[22] See also Potts, *op. cit.* pp. 32–4, 46, and 52–4.
[23] Sayles, *Early Laws of Texas*, 2: 386.
[24] Article X, section 8.

The real question before the court was whether or not a grant of lands by the state in a charter to a railway company is a contract. The Supreme Court answered this question in the affirmative and held, therefore, that sections five and seven of the Constitution of 1869 were null and void because they were contrary to the United States Constitution which prohibits a state from passing any act that will impair the obligation of a contract.

This decision was rendered in 1872, and it made good the claims of the railway company to the lands within the reservation that had been located and surveyed in accordance with its charter. It also had the effect of repudiating all those private claims to land within the reserve that had been acquired by individuals and settlers who had believed the Act of 1856 and the Constitution of 1869 to be conclusive in regard to the rights of the railway companies. Some lands had been purchased outright from the state. Consequently, in order to make good so far as possible, the injury suffered on account of this conflicting legislation and its inability to patent these lands, the state, by legislative act, refunded the money that had been paid for them.[27]

One good effect of this decision upon legislation relating to future land grants is found in the fact that the legislature was eventually prohibited by constitutional enactment from making any reservation of the public domain to satisfy grants of land for the purpose of encouraging the construction of railways and internal improvements.[28] It did not, however, cause any immediate suspension of indulgence in the land grant system as a means of encouraging such undertakings. In 1873, the year following the announcement of this decision, the people of the state ratified an amendment to that section of the Constitution which had repealed the land donation system of 1854.[29]

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[25] Sayles, *Real Estate Laws of Texas*, 1: 261.

[26] 16 *Wal.* 203, 1872.

[27] Sayles, *Early Laws of Texas*, 3: 387.

[28] *Civil Statutes*, 1895, p. 573.

Thereafter the legislature had full authority to grant lands for railways not exceeding twenty sections to the mile. With the constitutional obstacle out of the way, the International and Great Northern Railroad Company was soon incorporated by special act and granted twenty sections of land for each mile of road constructed without the accompanying obligation to survey and select the land in alternate sections.[30]

In addition to this magnificent land donation which enabled the company to locate "straight certificates" for 3,331,200 acres, its capital stock, rights, franchises, rolling stock and all other physical property, including the land, was exempted from all state, county, town, city, municipal and other taxes for a period of twenty-five years, except county and municipal taxes in counties and municipalities which had donated bonds to aid the construction of the road. The Constitution of 1876 permitted the legislature to grant not more than sixteen sections to the mile in alternate sections, and accordingly a bill was passed at the succeeding session which embodied this principle.[31]

REPEAL OF THE LAND GRANT SYSTEM

This legislation remained on the statute books until 1882 when the whole land donation system was repealed[32] because it was thought that the public domain was being disposed of so rapidly that soon there would not be enough left to satisfy existing claims. In fact the state had already issued certificates for nearly 8,000,000 acres more than it possessed.[33] This was the end of a long period of legislation covering more than thirty years during which the state endeavored by positive enactments to favor the development of its one great natural resource through the activity of private corporations. It also marked the approach of a time when the attitude of the state toward corporate activity was completely reversed and regarded by business men outside its limits as decidedly antagonistic rather than favorable to private corporations engaged in industrial and commercial enterprises.[34]

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[29] *Civil Statutes*, 1895, p. 476.
[30] *Special Laws of Texas*, 1875, p. 69.
[31] Sayles, *Early Laws of Texas*, 3: 449.
[32] *Civil Statutes*, p. 457.
[33] Potts, *op. cit.* p. 101.

PROGRESS OF RAILWAY DEVELOPMENT IN TEXAS

Railways were regarded, especially during the early period of their development in Texas, as an indispensable medium through which commerce could be carried on, and it was said that their influence in appreciating the value of real estate would extend to almost inaccessible and unproductive regions. Consequently the state chartered thirty-eight different companies in less than five years which had a projected mileage of more than 7,500 miles and which had been enabled by means of their charters and the railway laws then in existence to acquire and to hold an incumbrance on the public domain amounting to more than 77,080,720 acres. Fewer than one hundred miles of road had been constructed, however, by the end of that period (1858).[35] Nearly one-half of this incumbrance upon the public lands was forfeited because the greater number, at least a very large number, of these companies were chartered only for the purposes of speculation and were never able to complete their projected lines and patent their lands. But even with such magnificent donations of land as security for the investment of capital, the companies had actually constructed but very little more than 500 miles of road by 1870, nearly twenty years after the time when the land grants were first made to insure the building of these railways. This was equivalent to about one mile of railway for every 540 square miles of territory in the state.[36]

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[34] Merchants Association of New York, *The Natural Resources and Economic Conditions of the State of Texas*, 1901, p. 81.

[35] Runnels, Governor H. R., *Annual Message*, December 27, 1858. The foregoing figures are taken from this message and are given merely as the statement of Governor Runnels representing an official point of view at that time. Mr. Potts makes the following statement for the entire period prior to the Civil War, (*op. cit.* p. 34): "Beginning with the Texas Railroad Navigation and Banking Company in 1836, the Legislature had by special act incorporated more than fifty railroad companies and authorized the construction of many thousands of miles of line". There is also some disagreement as to the total number of miles of line completed in 1858, 205 being the number given by Mr. Potts as compared with fewer than 100 cited above.

The total mileage exceeded 8,700 miles, however, in 1890, and this was a ratio of one mile of railway to thirty-two square miles of territory. More than 13,000 miles had been completed by 1910 and the ratio had risen to about one to twenty.[37] Not nearly all this mileage was built as a result of land grants, but a great deal is due to the impetus of the land grant system. On the whole, sixty-seven companies had been chartered prior to 1882, of which only nineteen constructed their roads and only twelve finally received lands.[38] A total of 38,800,000 acres was patented to these companies, but a large amount of this land has since been recovered so that at the present time approximately 32,400,000 acres is all that has been received by railway companies.[39] This acreage includes more than 38,000 square miles, an area larger than the state of Indiana.

In spite of the imposition and fraud that was practiced upon the state, the policy of granting land to railway companies was a judicious and an economic one. With no roads whatever in the state when it was adopted, and with 6,000 miles in operation when it was abandoned at the end of thirty years,[40] the stimulus which it gave to activity along this line is unquestionable. If the laws in which it was expressed had been wisely enacted and skillfully executed, the state would have profited greatly by its operation. Regardless of its defects and disappointments, this system ultimately brought about a period of railway building probably excelled in no other state or country;[41] made possible a most phenomenal growth in agriculture by supplying the necessary transportation facilities, and secured for the state in the railway corporations the most efficient of its colonizing agencies. It also secured the survey of a part of the public domain equal in quantity to that donated to the companies. This advantage, however, was not so beneficial as it seemed, for considerably more than 9,000,000 acres have had to be resurveyed, at a cost to settlers far in excess of $200,000, in order to quiet the "trouble and turmoil" resulting from the uncertainty of the former surveys made by the railway companies.[42] Nevertheless, the land grant system was a great disappointment, and in many ways, a complete failure because it did not materially assist in conducting the traffic or in enhancing the land values during the two decades for which it was originally designed. This is a matter of utmost significance for it is evident that with only 500 miles of road actually completed and in operation at the end of twenty years the immediate benefits that were expected to be derived from the land grant system were practically all deferred until the next generation.

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[36] Potts, *op. cit.* p. 40.

[37] *Ibid.*, p. 44.

[38] *Ibid.*, p. 101.

[39] Robison, J. T., Commissioner of the General Land Office, *Biennial Report*, 1910, p. 29.

[40] Potts, *op. cit.* p. 43.

[41] see Appendix III, e.

At the time the federal government adopted the policy of granting public land to encourage railway building, hopes and expectations were entertained throughout the whole nation similar to those in Texas. Railways were looked upon as a means of greatly appreciating the value of the public lands, and accordingly, 155,904,994 acres were granted to accomplish this purpose.[43] Quick construction was an essential condition for the success of such a policy, for delay in the building of a road might entirely change the situation and remove the necessity for it. In this respect the land grant system in the United States was also a disappointment, for a careful estimate which has been made shows that probably not more than one-half of the 7,445 miles of such contemplated roads were constructed and put into operation within the time specified in the statutes.[44] The Texas system suffered a good deal in comparison with this situation, however, on account of the fact that the total mileage of projected lines for which the state had issued charters equalled that of the United States; whereas less than one-seventy-fifth of this mileage had been constructed at the end of five years and but a little over one-fifteenth of it had been completed at the end of the twentieth year after the land grants were first made.

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[42] Potts, *op. cit.* p. 104.

[43] Donaldson, *Public Domain*, p. 273; approximately 116,000,000 acres of this magnificent donation have been patented up to the present time. Commissioner of the U. S. Land Office, Annual Report, 1914, pp. 53–55.

[44] Sanborn, John Bell, *Congressional Land Grants in Aid of Railways*, Bulletin of the University of Wisconsin, No. 30, p. 82.

Many influences and circumstances doubtless are responsible for the retarded development of railway building in Texas during the land grant period. The Civil War with its attendant financial stringency obviously was a most potent factor in the dilatory progress which was made. "Reckless legislation" was another factor of no mean importance and, from the standpoint of this study, one which merits further consideration.

The legislature seems to have committed itself to the granting of charters indiscriminately and wholly without reference to locality, usefulness or any guarantee of compliance. The whole map of the state was plastered over with charts of the projected lines and the whole community was thoroughly canvassed to find suitable names to fill up the list of incorporators.[48] The fault lay, not in the corporate system, but in its abuse. Had charters been granted only to companies for whose lines there was, at least, an apparent need, and had the legislature been careful to avoid granting conflicting and overlapping charters, doubtless the land donated would have been sufficient in quantity and value to have secured the construction of such roads as would have supplied a public necessity. Had the problem been handled as a strictly business proposition between individuals or private corporations would have been, the equivalent of such an offer surely would have produced concrete results long before the expiration of twenty years. But when applications were the sole reason for granting charters for which not a dollar of cash or corporate securities was required as an assurance of good faith, and when electioneering purposes, personal ambition and individual cupidity were controlling motives in the disposition of public property, little more could be expected. Such, however, were the elements which entered into the improvident legislation that characterized the decade of the fifties. The corporate system with liberal donations of land should have been good public economy, but from the standpoint of state activity the explanation for its failure is directly attributable to the legislature, the members of which, some on account of a lack of foresight and business ability and others on account of selfish private interests, in face of the advice and in opposition to the counsel of the administrative officers, gave legal status to the designs of speculators and impostors.[46]

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[48] Runnels, Governor H. R., *Annual Message*, December 27, 1858. This is an unusual message. A copy of it may be found in a bound volume of printed messages in the State Library at Austin, Texas.

In this respect the legislative and administrative officers of Texas have probably been no worse, nor very little better, than similar officers of other states. The defect seems to the writer to be one of system rather than of personnel. The more one studies the efforts of state legislatures, during the nineteenth century, to deal with the problems of internal improvements and of disposing of the school lands ceded to the states by the federal government,[47] the deeper the conviction becomes that their capacity for dealing with business problems of this nature was extremely meager.

LAND GRANTS TO OTHER INTERNAL IMPROVEMENT COMPANIES

Thus far the accounts of the donations to aid railway building have quite overshadowed similar donations for other internal improvement purposes; but such donations are not altogether to be lost sight of. The state in its generosity and enthusiasm for rapid economic development appropriated no less than four and one-half million acres[48] to assist such struggling enterprises as the construction of steamboats and other sea-going vessels, the dredging and improvement of the Sabine, Neches, Angelina, Gaudalupe, San Antonio, and other rivers, the digging of canal and irrigation ditches, the boring of artesian wells, the construction of plank and macadam roads, and for the erection of "new and efficient machinery for the manufacture of iron from ore, or for the manufacture of cotton or wool into thread or cloth, or for the manufacture of firearms, nitre, sulphur, powder, salt, cotton, or woolen cards and spinning jennies, or paper and oil."[49] Truly this was an ambitious program. That the results obtained from so broad an endeavor did not meet the expectations of those who were obliged to bear the burden of supporting it is not at all surprising. The dredging and improving of many "so-called rivers whose pretensions to being navigable streams enabled them to prey upon the State," and the digging of "canals and ditches for navigation and irrigation, leading nowhere and benefiting nobody," says Mr. Dudley G. Wooten,[50] one of Texas' most able historians, "furnishes a chapter of folly in the history of our land system, that is all the more deplorable as having been written under a political administration whose boast it was to have reversed the extravagant and improvident policies of former years." Unless history is to repeat itself, though on a larger scale, and the recent "pork barrel" agitation is to be of no avail, the nation may well consider the experience of Texas in generously donating public funds for local developmental projects.

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[46] See also veto messages in the *Journals* of the 6th and 7th Legislatures.

[47] On the management of permanent public school funds and losses to the same see Swift, *Public Permanent Common School Funds in the United States, 1795–1905*, Chs. 5 and 6.

[48] Robison, J. T., Commissioner of the General Land Office, *Biennial Report*, 1910, p. 30.

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[49] Sayles, *Real Estate Laws of Texas*, 1: 270-3.

[50] Wooton, *op. cit.* 1: 834.

CHAPTER IV

PUBLIC LANDS AS A SOURCE OF REVENUE

PUBLIC LANDS AND REVENUE IN THE UNITED STATES

The public lands of the United States, especially during the early periods of its history, were regarded as a source of revenue and many laws were passed having that object in view.[1] But it is doubtful whether as a revenue producer the national land system has been very successful, for the "revenue theory of management clashed with the needs of the actual settler" and very frequently the settler had a noteworthy advantage in such a contest. It is true that the federal government derived a considerable sum of money from the proceeds of its land sales, especially so during the early period of our national history.[2] Nevertheless the opinion prevails among many writers on this subject that the public lands have cost the government more for their purchase and administration than has been obtained from their sale and lease. Even after one hundred and twenty-five years of possession and control the government accounts show a balance of only about $70,000,000 in favor of receipts, the expenses for war and exploration being excluded. In recent years very little effort has been put forth to derive any income from them except in the way of certain office fees for surveys and patents.

As soon as the public lands of the United States were patented to individual owners, they became the personal property of such owners and were subject to taxation by the states in which they were situated. But the power to tax land in the possession of private holders does not extend to the federal government. Consequently, the income derived from the sale or lease of these lands before they were patented is, strictly speaking, all that the nation received from them in the way of direct revenue.

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[1] An excellent and comprehensive discussion of the revenue aspects of the United States land system is presented in a recent book by Treat, Payson J., *The National Land System, 1785–1820;* see also, Sato, *op. cit.* pp. 385–6.

[2] See Appendix III, f.

RELATION OF PUBLIC LANDS TO REVENUE IN TEXAS

The income derived from the public lands of Texas, however, has far exceeded their cost of administration. Estimated conservatively, the state now has permanent funds amounting to approximately $100,000,000 that have been derived from its public lands. In addition to these, it has obtained many millions more in a transfer to the United States, in sales to private owners, in the erection of its capital building, in its bounty and donation warrants, and in the survey of a quantity equal to that granted to railway companies. Owing to the incompleteness of records, an accurate statement of just what the net proceeds of the public lands have been cannot be made at this time. Large as the net gain may seem to be, however, it is far short of what should have been derived from this vast area by judicious management.

As soon as the public lands of Texas have been patented to private owners, the state, unlike the federal government, has been able to tax them. Thus, irrespective of what may have or what ought to have been derived from them before they were patented they have been a constant and never-failing source of income to the state ever since. This fact has had no little influence in bringing about that exceptionally liberal and often improvident disposition of these lands which has caused the state to forego a large portion of the income that might have been obtained from them before they were patented.

BOUNTY AND DONATION WARRANTS

One of the serious problems which confronted the Republic of Texas was the maintenance of an army.[8] Even though the Mexican forces had been completely routed in the battle of San

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[8] Garrison, *op. cit.* p. 231, *et seq.*

Jacinto and the independence of the Republic was an established fact, the infant nation was, nevertheless, in constant peril of subsequent Mexican invasions. Moreover, the Indians were particularly hostile because they thought the whites were too aggressive. In addition to this, they were incessantly encouraged in their ravages and depredations upon the Texas frontier by the secret agents of the Mexican government. Consequently an army had to be maintained to repel a possible invasion and to protect the frontier. But the nation had no way of supporting such an army, except as it might be able to exchange a portion of its public domain for services of soldiers and to supply their equipment from income derived from the sale of other portions of the public domain or credit based upon it. In later years when it was felt that these soldiers should be more liberally cared for, the state was able to render them more substantial assistance by donations from its public lands as pensions than in any other way. Thus, large quantities of public land in Texas have been granted to soldiers under what are known as bounty and donation warrants.

Bounty and donation warrants were certificates of land issued to soldiers, or to families of deceased soldiers, of the Republic and of the state of Texas. Usually they were given as a payment for services or as pensions, but some were issued to the heirs of those who fell in the Alamo as a gift in whom title vested absolutely[4] and others were issued to soldiers who had been permanently injured and rendered incapable of bodily labor, as a testimony of the gratitude of the Republic.[5] Generally speaking, these certificates could be located on any of the vacant and unappropriated public domain, just as headright certificates. The quantities of land designated in them varied usually from 160 to 1280 acres, according to the time, purposes and circumstances under which the grant was made. Thus, in the early history of the republic when it was desirable to obtain volunteers from the United States, the quantity of land was graduated according to the period of service as follows: All those who had served three months were entitled to 320 acres;

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[4] Sayles, *Real Estate Laws of Texas*, 1: 210.

[5] *Ibid.*, p. 211.

six months, 640 acres; nine months, 960 acres; and twelve months or more, 1280 acres.[6] In 1881 a grant of 1,280 acres was made to all confederate soldiers living within the state, or to the widows of those confederate soldiers who had been killed during the Civil War.[7]

An exact statement of the number of acres patented as bounty lands and donations to soldiers and their families cannot be given because separate accounts of this nature have not been kept in the general land office. But the use of a part of the public domain for this purpose, as a matter of public policy, was a good one. The effect of the offer in 1837 was almost immediate, and soon the number in the army rose to more than 2,000 men, most of whom came from the United States.[8] Moreover, a grant of public lands to those who had rendered military aid to the nation and the state and to their families, either as a payment for services or as a pension, was even better than a payment in money because the government thereby retained the later residence and support of these loyal men in a civil capacity. If the state lost anything in the issuance of its bounty and donation warrants, the loss was due to inefficient administration and the inability of its administrative officers to distinguish between valid and fraudulent warrants. In fact, a select committee of the Senate reported in 1856 that 97,560 acres of land were fraudulently claimed under this form of land certificate.[9]

THE CAPITOL LANDS

The so-called "capitol lands" consist of 3,000,000 acres that were set apart by the constitution of 1876 to secure the erection of a capitol building.[10] In accordance with the statutes which were afterwards enacted, these lands were located in the extreme northwestern corner of the state and were surveyed into sections of 640 acres each.[11] A "complete and perfect title" for them was given to a syndicate in exchange for the furnishing of material and labor and the erection of the present capitol building according to the terms of the contract entered into by the Capitol Building Commission and Mathias Schnell of Rock Island, Illinois.[12] The transfer of the lands was made in thirty-five installments as the work progressed.

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[6] Sayles, *Early Laws of Texas*, 1: 252.
[7] *Civil Statutes*, 2: 319.
[8] Garrison, *op. cit.* p. 231.
[9] Select Committee of the Senate, *Report*, Senate Journal, 1856, p. 387.
[10] *Constitution of 1876*, art. XVI, sec. 57.
[11] *Laws of Texas*, 1879, p. 9.

A committee of the state officials valued these lands at $1,500,000 before the advertisement for bids was published. Evidence that this estimate was quite near the real value of the lands at that time is found in the fact that 50,000 acres immediately adjacent to them were sold at public auction at the rate of fifty-five cents an acre by the same officials in order to meet the cost of surveying the entire tract. In return for these lands the state secured the erection of a capitol building that actually cost in labor and material $3,744,630.60.[13] In addition to this, it has had the use of one of the finest and most commodious capitol buildings in the United States for more than twenty years. At the same time it obtained some very effective advertising of the real value of its lands and building materials through the publication and discussion of this offer in the eastern and northern parts of the United States and Europe.

The land that was granted for this purpose is still held by a syndicate and is, for the most part, used for cattle ranches, just as is the surrounding country. The state, however, cannot be said to have suffered from the presence of a land monopoly due solely to this transaction, for nearly all the land in the adjoining counties has also been in the control of large cattle companies. But these are fast disappearing and simultaneously with their disappearance, the syndicate is said to be preparing to dispose of its land to small holders.

LAND SCRIP

Throughout the early years of the existence of the Republic of Texas, the public finances were in a most deplorable and embarrassing condition.[14] President Houston says that during the first year of his administration there was less than $500 of actual cash in the treasury.[15] Moreover, an army had been enlisted through the liberal offers of land as payment for military services. Money had to be raised in order to provide equipment and subsistence, otherwise the army would have been left destitute. Such a condition of affairs, it was feared, would bring about anarchy and dissolution. The credit of the government was insufficient at this time to supply these funds on any kind of reasonable terms, and therefore, officials of the government were forced to dispose of the public land in order to meet this public exigency. The idea of selling the land was not resorted to, however, until after the government had apparently exhausted all other possibilities of raising money. In December, 1835, a million dollar loan was authorized and B. T. Archer, W. H. Wharton, and Stephen F. Austin were sent as commissioners to the United States to negotiate the loan. They were instructed "to pledge or hypothecate the public lands of Texas, and to pledge the public faith" as security for such a loan.

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[12] For a copy of the contract see Capitol Building Commission, *Report*, 1883, p. 96.

[13] *Ibid.*, *Final Report*, 1888, p. 3.

Early in 1836 these commissioners negotiated a loan of $200,000 with Thos. D. Carneal and others, but the efforts of the government to secure its release from the terms of this contract which it believed to be intolerable were unsuccessful[16] and turned the weight of public opinion, for the time being, against the plan of raising money for the government by means of an ordinary loan. The objection to the contract just mentioned was that land to be selected from any part of the public domain might be taken at the rate of fifty cents an acre in payment for the debt. The contract provided that the government of Texas could not make any other grant or sale of lands thereafter which did not contain a reservation of priority of location for the lands specified in the contract until after the debt was paid.[17] This arrangement apparently constituted an exclusive privilege by which the creditors of the state could locate their lands in preference to all other claimants except that vested rights to property in land then existing could not be disturbed. This privilege was the objectionable feature of the whole plan, and although $20,000 had already been received from the proceeds of the loan the government refused to ratify the contract.[18] The result of the negotiation afforded conclusive evidence of the impracticability of anticipating the wants of the country, by means of loans.[19] Some other course was necessary and the government resolved to issue scrip for land,[20] considering the "*public domain as the most available and the least objectionable source of public revenue.*"[21] Such were the conditions which first brought about the issuance of land scrip in Texas.

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[14] Yoakum, *History of Texas*, 2: 189, 243, 285 and 379.

[15] Houston, President Sam, *Annual Message*, 1837, House Journal, Special Session, p. 153.

[16] Sayles, *Real Estate Laws of Texas*, 1: 219; Burnet, President, *Annual Message*, October 4, House Journal, 1836–1838, p. 14.

[17] In *Franklin v. Kesler*, 25 Texas 138, (1860), the court held, however, that the president had no authority to attach any conditions whatever to land scrip, much less that such scrip should deprive the government of the

Land scrip was an evidence of debt against the state which was payable in public land at a specified rate according to the terms of the law which authorized its issue. In reality the issuance of land scrip was only a method of selling public land or of transferring it to those who held claims against the government as a settlement of their accounts. Frequently, though not always, the debt had been contracted before the issuance of the land scrip was authorized. This statement is true more notably for the early history of the Republic and state than later when the state sold land scrip outright and permitted the purchaser to locate it at his own convenience. Most land scrip was issued in certificates of 160, 320 and 640 acres, though there were some for even as much as 1,280 acres and at a rate

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right to reserve from location any portion of the public domain, as the policy or exigencies of the Republic might demand.

[18] For a brief but good account of this whole transaction see an article by Barker, E. C., *The Finances of the Texas Revolution*, in *Political Science Quarterly*, 19: 612–635, 1904.

[19] In reality this loan, if it had been completed as it was contemplated, probably would have resolved itself into a mere sale of the public lands, for the lenders appear to have decided to take lands in payment for their loan even before they advanced any money on the contract. Barker says that to them "it was a gigantic land speculation" and that they "bound themselves by mutual agreement not to sell to any outsiders for less than $1.25 an acre and began forthwith to boom Texas lands both by letter and in the public prints." *Op. cit.* p. 631.

[20] Resolution of December 6, 1836, Sayles, *Early Laws of Texas*, 1: 210.

[21] Burnet, President David, *Message to Congress*, 1836, House Journal, p. 14.

varying from fifty cents to $2 an acre. These certificates were an evidence of a right to land to be selected out of the vacant, unappropriated public domain[22] and when such selection was made by a location of the certificate, the right of the holder attached immediately to such land. They were transferable and the assignee was entitled to the same rights and privileges of location, survey and patent as the original holder. As a general rule, land scrip could be located and the land surveyed and patented in the same manner as other certificates for land, except that no certificate for land scrip could be located on salt springs, gold or silver mines, copper, lead or other minerals, or on any island of the Republic. In nearly all the early issues of scrip, the certificates could be held by aliens and the land patented to them. Later on, the issues were restricted to citizens of the Republic. The early issues of scrip did not carry with them any obligation of residence on the land or any penalty of forfeiture for failure to make improvements. The later issues, however, were sold only to actual settlers. The constitutions of 1869 and 1876 both contained sections forbidding the legislature to make further issues of land scrip, except on this condition.[23]

Land scrip was usually issued only at times when it was thought better to obtain money in this way than to issue bonds. It was, therefore, simply one way of expanding the credit of the government. The system, however, was open to abuse, especially when first adopted, because the certificates were poorly engraved and easily counterfeited. The issuance of certificates of similar form to soldiers under the bounty and donation laws, which passed as land scrip, also detracted from the efficiency of the system. The soldiers frequently being destitute, sold their certificates for as low a rate as twenty cents an acre. These certificates immediately passed into the hands of speculators in New Orleans and other cities in the United States so that when the scrip of the government was offered for sale, its value was immediately depreciated to the level of the certificates held by the speculators. As a result, the government was unable to sell its scrip for cash or to purchase supplies for the army without paying an advance in price of one hundred to two hundred per cent.[24]

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[22] In *State v. Delesdenier*, 7 Texas 76, (1851), for instance, it was held that the scrip issued to William Bryan gave the holder no claim to any particular portion of the public lands but a general lien upon all the lands to be satisfied out of such portions as were unappropriated at the time he made his selection and location.

[23] There have been a large number of acts passed in Texas relative to land scrip. The more important ones will be found by reference to the following citations: Sayles, *Early Laws of Texas*, 1: 210, 211, 224, 235, 238, 257, 283, 472 and 576; also 2: 254, 321, 452, 510 and 532. For constitutional provisions see *Civil Statutes*, 4: pp. 444 and 573; see also Sayles, *Real Estate Laws of Texas*, 1: 219–222.

SALE OF VACANT PUBLIC DOMAIN

In the early days of the Republic of Texas, physical property of a taxable nature existed only to a very limited extent, and the foreign commerce of the infant republic was unable to bear a high duty for the support of the government. In 1840 the revenues, nominally, were $458,000, but in fact they yielded only a little over $90,000; whereas the government expenses during that year were upward of four times that amount.[25] But the nation was rich in its landed estate and everyone was hopeful. If the political organization of the government could only be maintained and its dormant resources developed, the revenue from the disposition of its public lands and from the increased value of physical property available for taxation would in after years be much more than sufficient to liquidate the debt. Consequently, accounts were run, loans were made and promissory notes of the government were issued with a lavish hand. In fact, nearly every legitimate device known to human ingenuity, which could be made to produce money or expand the credit of the nation, was employed.[26]

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[24] Houston, President Sam, *House Journal, Special Session*, 1836–8, p. 64.

[25] Yoakum, *op. cit.* 2: 317.

[26] The following comment regarding the efforts of the Republic of Texas is taken from Mr. Barker's account of the *Finances of the Texas Revolution*, (*op. cit.* p. 612): "Under these conditions, then, how were the Texans enabled to establish a government, maintain an army and accomplish their independence? Mr. Henry M. Morfit declared to Secretary Forsyth that the means were derived principally 'from the sympathy of their neighbors and friends in the United States and by loans upon the credit of the state', while Mr. Gouge, in his *Fiscal History of Texas*, somewhat facetiously remarks that the various expedients of governments for raising funds in such

So fruitful were the efforts to borrow money that by the end of the second year of its existence the nation had acquired a public debt of more than $2,000,000; and by the end of President Lamar's administration in 1841, this amount had been increased to $7,500,000. But worse than the amount of its public debt was the fact that the government securities had been peddled about the United States as a matter of speculation until the value of many of them had fallen to less than twenty cents on the dollar.[27]

The debt of the Republic of Texas was liquidated by the fixing of the northern and western boundaries of the state with the United States government and the transfer to that government of the land which now comprises the larger part of New Mexico for $10,000,000 in government bonds bearing five per cent interest, on condition that $5,000,000 of this fund be retained in the United States Treasury to pay those debts of the state of Texas for which duties on imports had been specially pledged.[28] In reality, this transfer was a sale to the federal government of approximately 67,000,000 acres of the public domain.

Considerable opposition to this transfer manifested itself in Texas because the creditors of the state, whose debts had been scaled down by a public auditing committee authorized by the legislature so that speculation in them was being diminished, were clamoring for the full face value of their claims and had a large lobby in both houses of Congress at Washington which was insisting that the federal government force the state to meet their demands.

> "While this measure was pending in Congress many citizens (of Texas) looked upon it as a sort of bribe to surrender a principle of right, and their feelings in opposition to it were wrought up to the highest pitch of desperation. With the great body of citizens, however, it was regarded as the best that could be done under the circumstances."[29]

On the other hand, General Houston, who was the senator from

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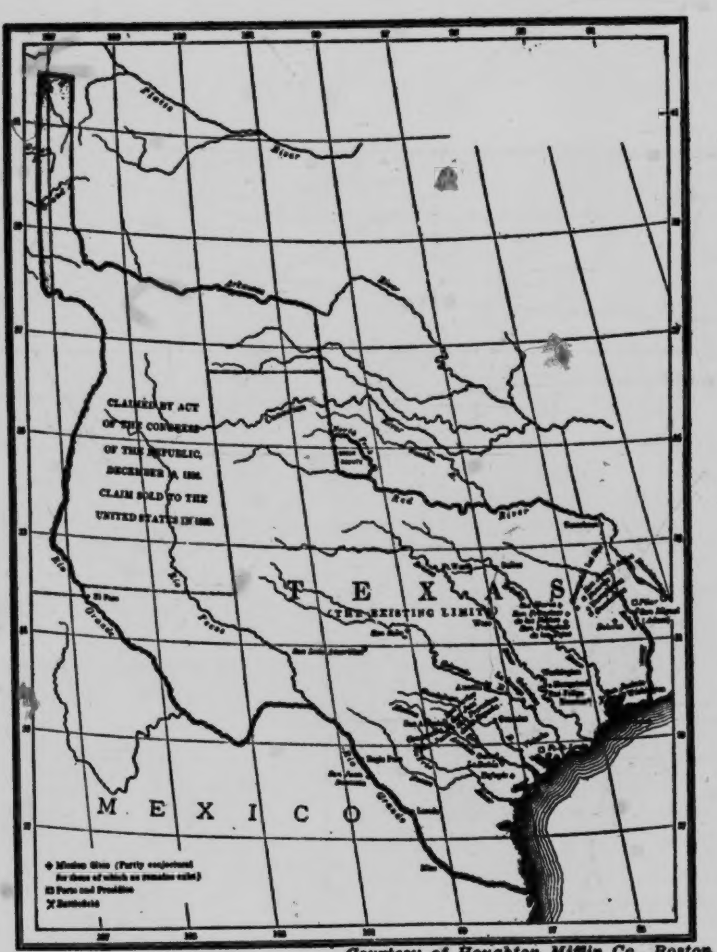
exigencies may be resolved into 'taxing, borrowing, begging, selling, and robbing and cheating', and that the Texans apparently determined to try all six."

[27] Garrison, *op. cit.* pp. 235–6.

[28] Sayles, *Early Laws of Texas*, 2: 267.

[29] Wooten, *op. cit.* 2: 29.


Platte River
Arkansas River
CLAIMED BY ACT
OF THE CONGRESS
OF THE REPUBLIC,
DECEMBER 19, 1836.
CLAIM SOLD TO THE
UNITED STATES IN 1850.
Red River
Rio Grande
Rio Pecos
El Paso
TEXAS
(THE EXISTING LIMITS)
MEXICO
◆ Mission Sites (Partly conjectural for those of which no remains exist)
Forts and Presidios
Battlefields

Courtesy of Houghton Mifflin Co., Boston.

Map Illustrating Historical Geography of Texas.

Texas at that time, regarded it "as the best sale ever made of land of a worthless quality and a disputable title."[30]

The payment of the $10,000,000 by the United States enabled Texas to clear away all of the old debt of the Republic and left it a handsome surplus in the treasury. Very little effort was made thereafter to sell any of the public land until the close of the Civil War. Acts were passed, however, in 1858 and 1860 which authorized the land commissioner to sell land scrip at the rate of one dollar an acre, which might be located on any part of the vacant and unappropriated public domain.[31] It appears that only twenty-three sales, aggregating 10,506 acres, were made in accordance with these laws, and they were only, therefore, of minor importance. But in 1876, the state government was once more pressed with a debt amounting to nearly $5,000,000,[32] and again it looked to its public lands for relief from the burden. Consequently a law was passed in 1879 which set apart all of the vacant land in forty-four counties to be sold at the rate of fifty cents an acre and directed that one-half of the proceeds from such sales should be credited to the school fund and the other half applied to the "payment and extinguishment of the bonded debt of the state as fast as the same became due and payable."[33] So urgent was the necessity for selling this land that "any person, firm or corporation" desiring to purchase it was authorized to do so upon having it surveyed by a public surveyor. The land could not be sold, however, in tracts of more than 640 acres.

As a source of revenue, this method of disposition was not a very important one, especially when the results that were obtained under it are compared with the debt it was expected to help liquidate. The records of the general land office show that only 3,321,873.72 acres were sold under the law mentioned above and two similar statutes which supplemented it. These sales brought into the treasury $1,769,572.79, one-half of which was transferred to the school fund.[34] Fewer than one million dollars, less than one-fifth of the amount needed, were available, therefore, for application to the public debt. Its policy, however, was severely criticized as "selfish," "unwise," "unstatesmanlike" and "a gross injustice" because it reserved a vast body of lands for the satisfaction of a public debt then existing and deprived holders of valid certificates for land of any chance for their satisfaction.[35] The criticism seems to have been well founded, for the constitution probably never contemplated that the current expenses of the government should be met by a sale of public lands. Such a payment is what this law really amounted to, for all the debts incurred on account of the Civil War were of course repudiated by the first reconstruction legislature.

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[30] Quoted in Gouge, *Fiscal History of Texas*, p. 180.

[31] Sayles, *Early Laws of Texas*, 2: 452 and 466.

[32] Wooten, *op. cit.* 2: 218.

[33] *Act of July 14, 1879*, Civil Statutes, 2: 681.

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[34] Charles Rogan, Commissioner of the General Land Office, *Special Report*, 1899, p. 30. The two similar statutes referred to are the Act of February 20, 1879, and the Act of March 29, 1887.

[35] *Texas Review*, 1885, p. 184.

CHAPTER V

LAND GRANTS FOR EDUCATIONAL AND ELEEMOSYNARY INSTITUTIONS

Scope of this Legislation

The legislature is practically unrestricted in its control over the vacant and unappropriated portions of the public domain. It may sell such public lands on easy terms, or even give them away, in order to encourage settlement or to aid in the construction of railways. But not so with public lands set apart for particular funds, especially those that have been so appropriated by constitutional provisions. Such lands are still public lands, but the control of the legislature over them is limited to the extent that they must always be disposed of, theoretically at least, so as to realize the largest possible income for the fund. The interests of the fund rather than of the settler are the consideration of primary importance in this case. A study of the laws which appropriate such lands to particular funds is, therefore, the first step in a discussion of land grants for the support of the special institutions. Then follows in natural order a study of the laws enacted for the final disposition that has been made of them and of the proceeds that have been derived from the fund. And so far as Texas is concerned, this study must also include an account of the disposition of the timber and mineral lands, for practically no laws have been enacted there in regard to these lands, except for such as belonged to the free school and other public funds.

The Reservation and Appropriation of Public Lands

In the autumn of 1838 when the Republic of Texas was scarcely more than two years old, President Houston made the following significant statement in reference to creating a perpetual endowment for public school purposes by reservations of public land:[1]

> "The present is a propitious moment to lay the foundation of a great moral and intellectual edifice which will in after ages be hailed as the chief ornament and blessing of Texas. A suitable appropriation of lands to the purpose of general education can be made at this time without inconvenience to the government or the people; but defer it until the public domain shall have passed from our hands, and the uneducated youths of Texas will constitute the living monuments of our neglect and remissness. A liberal endowment which will be adequate to the general diffusion of a good rudimental education in every district of the Republic and to the establishment of a university where the highest branches of science may be taught can now be effected without the expenditure of a single dollar. Postpone it a few years, and millions will be necessary to accomplish the great design."

The statement of President Houston, doubtless, is typical of the sentiment which prevailed in the Republic at that time when the policy of endowing a free school system with public lands was first adopted. This policy has been consistently followed and enlarged ever since and seems to have met with very little effective opposition at any time. In fact, since a large majority of the citizens of Texas were landowners, these reservations were a great economic advantage to them; first, because large quantities of free land were in this way withdrawn from the market for a time, and the value of the lands privately owned were thereby enhanced; and second, because the funds thus built up would ultimately reduce the rate of taxation on these same lands privately owned. The object of this reservation policy was very concisely stated by the commissioner of the general land office, who, in commenting on the permanent school fund, recently said:[2] "This fund was not created and founded by our fathers as a charity fund, but for the purpose of educating the masses with the least rate of taxation to the individual."

The constitution of Texas (Art. VII, sec. 3) requires that a free school be maintained in each district at least six months out of each year. Subsequent legislation has required the County

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[1] Quoted in Wooten, *op. cit.* 2: 428.

[2] Commissioner of the General Land Office, *Biennial Report*, 1902, p. 58.

Commissioners' Court[3] to subdivide each organized county not so divided into school districts and to organize any unorganized county attached to it for judicial purposes into one or more districts upon the written petition of no fewer than ten residents of such unorganized county. The money necessary for the support of these schools is derived from the available school fund of the state which is apportioned to the various cities, towns and districts on the basis of scholastic population, the available county school fund, and from local taxes which may not exceed fifty cents on each one hundred dollars worth of property.[4] Lands on a frontier settlement, however, cannot yield much revenue from local taxation; consequently a period of years must elapse after they pass into private hands before sufficient revenue can be secured from them to maintain an adequate school system. If a system similar to the one prevailing in Texas, therefore, is to be maintained, it must be at the expense of the older communities, except insofar as that expense may be offset by the income derived from a permanent fund.[5] But support for common schools wholly dependent upon taxation is also dependent upon the will of the persons taxed as expressed through their legislative bodies; and so unless some adequate provision has previously been made, the more remote the school from the source of its income, the more likely it is to suffer on account of a lack of funds.

Thus the reservation policy serves both to render the support for schools in distant rural and sparsely populated districts absolutely certain and to equalize the burden of taxation by including a part of this support in the price of the lands. Moreover, it has the additional advantage of being constant and easily administered. When the lands have once been sold and the proceeds invested, the system is automatic and self-operating, whereas a tax system is impulsive in that it is subject to the whims and caprices of legislative bodies and clumsy in that it requires a large administrative force constantly employed for the purposes of assessment and collection. If a school land reservation policy does not work out evenly and successfully, its failure must be attributed to a short-sighted legislative policy in disposing of the land and prescribing regulations for the investment of the proceeds, or to an inefficient administration of these laws.

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[3] *Acts of 1893*, p. 182, sec. 40; see also, *Revised Civil Statutes*, 1911, p. 600.

[4] *Revised Civil Statutes*, 1911, pp. 576, 603 and 605. The County Commissioners' Court is composed of four commissioners, each elected from a commissioner's precinct for a term of two years, and the county judge who, when present, is the presiding officer of the court.—*Revised Civil Statutes*, 1911, p. 478.

[5] See Appendix III, g.

The policy of reserving public lands for the benefit of the school fund received its first legal recognition in the act of January 26, 1839, which set apart three leagues (of 4,428 acres each) in each county for the purpose of establishing a primary school or an academy.[6] It also directed the president of the republic to have fifty leagues surveyed from any part of the vacant domain for the establishment and endowment of two universities or colleges afterwards to be created. The following year another law was passed which created a county board composed of the chief justice and two associate justices in each county to be known as the "Board of School Commissioners."[7] This board was given full power to receive and administer any land or other property that might be given or appropriated to the county for the benefit of its schools or academy. It was directed to have the three leagues previously granted by Congress properly located and surveyed and in like manner to have an additional league surveyed which might be sold and the proceeds applied to the purchase of apparatus, one-half of which was to be used in the academic school of the county and the remainder distributed equally among the various common school districts.

None of the lands appropriated by the law of 1839 could be disposed of except by lease during the first three years after they were appropriated, and in addition to this, all leasing contracts were limited to a term of three years. The Constitution of 1845 enabled the counties which did not contain four leagues of vacant land within their borders to have a quantity surveyed in some other county sufficient to make up the full four leagues.[8]

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[6] Sayles, *Early Laws of Texas*, 1: 319.

[7] *Ibid.*, p. 390.

[8] Article X, Sections 3 and 4; for interpretation of these sections see *Bell County v. Alexander*, 22 Texas 363.

In addition to this, it extended the time during which this land could not be sold to twenty years. In this way improvident and hasty disposition of the county school lands was prevented. Similar provisions were also placed in the Constitution of 1861.[9]

The early legislative and constitutional provisions relating to this subject were afterwards supplemented by additional laws which were intended to provide similar quantities of land for new counties as soon as they were organized. In 1875 four leagues were appropriated to each organized county which had not received a grant of lands for school purposes.[10] These lands could be surveyed from any of the vacant domain of the state. Another law was afterwards passed which specified that all unorganized counties were entitled to similar quantities of school land and a special reservation of 325 leagues was made from the vacant domain in which each unorganized county might claim its share as soon as it was organized.[11] The evident intention of the legislature, therefore, was to provide each county, whether organized or not, with four leagues of school land; it appears, however, that only 239 counties have received such land, that a few have not received the full quantity, and that there are eight unorganized counties which will not receive any such land.[12]

Up to the time of the adoption of the Constitution of 1866, the power to dispose of county school lands seems to have rested fully in the hands of the board of school commissioners in each of the several counties. At this time, however, full power to control these lands was given to the legislature and it was authorized to sell them under such terms as it might prescribe, except that lands which had already been patented to a county could not be sold without the consent of that county.[13] This provision was also continued in the Constitution of 1869,[14] but the legislature appears never to have made use of its authority to dispose of the county school lands. The validity of the title of a county to its school land became a question, however, for judicial determination and in 1873 the state Supreme Court decided that that section of the Constitution of 1869 which related to the power of the legislature to sell county school lands was not intended to divest the county of its right of property in land. In part, the court said:[15] "The state had parted with the title to a body corporate, capable of receiving and holding the title to land, and it had not the power or authority under the constitution of the United States, to recall her grants or violate her executed contracts."

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[9] *Civil Statutes*, 4: 251.

[10] Sayles, *op. cit.* 2: 325.

[11] *Civil Statutes*, 1897, 2: 1518.

[12] Commissioner of the General Land Office. *Biennial Report*, 1910, p. 30.

[13] *Civil Statutes*, 4: 329.

[14] *Ibid.*, p. 442.

This problem was permanently and finally disposed of in the Constitution of 1876 which stripped the legislature of all its power to dispose of county school land and vested it in the County Commissioners' Court. It was constitutionally declared that land which had been patented to a county was the property of that county and that the title vested in its corporate organization in such a way that no adverse possession or limitation could ever be made against it.[16] The Commissioners' Court was therefore authorized to sell or dispose of the county school land in such a manner as it might see fit. In the subsequent legislation intended to give effect to this constitutional provision, the only restrictions placed on the authority of the Commissioners' Court have been that the proceeds from the sale of these lands must be invested in bonds of the state of Texas or of the United States and that actual settlers must be protected in the prior right to purchase such lands to the extent of their settlement not exceeding 160 acres.

Nearly twenty years after Texas began to reserve and appropriate public land to counties for school purposes, it also adopted the plan of reserving public lands in order to build up a permanent school fund for the state. And just as the policy of reserving lands for counties was faithfully followed up until four leagues, speaking generally, had been provided for each county, so the policy of reserving state school lands was continued and enlarged as long as there was any vacant domain to reserve.

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[15] *Galveston County v. Tankersley*, 39 Texas 651, 1873. This holding of the Supreme Court rests on the fact that the appropriation of land to a county is held to be a contract, and therefore, the case comes under that clause of the United States Constitution which prohibits a state from enacting any legislation that impairs the obligation of a contract. (p. 657).

[16] See Appendix III, h.

Consequently, a dual system of public school lands has grown up in Texas, one part of which consists of county school lands which are subject to the disposition of the County Commissioners' Court, and the other, the state school lands, which are subject to the disposition of the legislature.

The general law which donated lands to railway companies specified that alternate sections which these companies were required to survey for the state should not thereafter be subject to location or settlement under any form of valid land certificate, but that they should be reserved for the state and should be subject to future disposition by the legislature.[17] Millions of acres were surveyed under this law and were offered for sale at the rate of one dollar and twenty-five cents an acre.[18] The proceeds from such sales were directed to be deposited in the state treasury to the credit of the public school fund. This offer of sale seems to have remained on the statute books until after the Civil War, but the school fund did not derive much benefit from it, because it was only one of the provisions of the act of 1858, and as we have already seen, 10,506 acres were sold under any of the provisions of the whole law.[19]

The constitutional convention of 1866, however, conceived the idea of transferring the title for the lands to the school fund and of directing the legislature afterwards to make provision for their sale and lease for the benefit of this fund. In this way they would be made a perpetual endowment for the public schools, whereas under the former laws the proceeds from their sale or use might have been diverted to some other purpose according to the discretion or caprice of any subsequent legislature. The constitution, therefore, reserved from settlement the alternate sections of all those grants that had previously or that might thereafter be made to railway companies or to any other corporation authorized to receive grants of land donated for the purpose of encouraging the development of the wealth and resources of the state, *and appropriated them* to the school fund.[20] It also directed the legislature to provide for their future sale and lease so as to give the preference rights to actual settlers. This same method of disposition was continued in the Constitution of 1869.[21]

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[17] Sayles, *Early Laws of Texas*, 2: 326.

[18] *Ibid.*, 2: 452.

[19] See p. 86.

By the time this constitution was adopted, the plan of reserving public lands for the benefit of the school fund had become pretty well established as a fixed policy of the state. Moreover, the fact that the public domain was being rapidly taken up to satisfy the demands of settlers and the claims of railway and other corporations was emphatically impressing itself upon the public mind. It was clearly seen that if any large additions were made to the reservations already provided, action would have to be taken soon. This was done in 1873 when one-half of the public domain as it then existed, or as much thereof as could be, was reserved and appropriated for the benefit of the school fund.[22] This was in addition to all reservations that had been previously made. This reservation and all that had been made previously were expressly incorporated into the Constitution of 1876.[23] Lands forfeited by railway companies and those in unorganized counties sold to the state for taxes have also been appropriated to the school fund.[24]

Thus it will be seen that all the alternate sections surveyed by railway and other internal improvement companies, all lands forfeited by railway companies, lands in unorganized counties sold to the state for taxes, and one-half of the vacant and unappropriated public domain as it existed in 1876, have been reserved from settlement and appropriated to the permanent school fund of the state.

A similar policy has been followed in reference to the university and four different state asylums. Almost simultaneously with the appropriations to the state and county school funds similar ones were made until over two million acres had been set aside for the university and one hundred thousand acres for each one of the four asylums.[25]

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[20] Art. X, Sections 2, 3 and 4.

[21] Art. IX, sec. 6.

[22] Sayles, *Early Laws of Texas*, 3: 177.

[23] Art. VII, Section 2.

[24] Sayles, *Early Laws of Texas*, 3: 463.

The Sale and Lease of Reserved Lands[26]

Although other laws relating to this subject had been previously enacted[27] the first definite and comprehensive policy of sale and lease of the reserved lands found its expression in the law of 1883.[28] This act provided that all the lands set aside for these public purposes should be leased and sold according to the provisions therein specified, and created what was known as the "School Land Board" consisting of the governor, attorney general, comptroller, treasurer and commissioner of the general land office, to transact this business for the state. The board was directed first of all to make a classification of all the lands into agricultural, pasture and timber lands and to ascertain what tracts had permanent water on them or bordering on them. A minimum price of $2 an acre was placed on all surveys of land without permanent water on them, $3 an acre for all watered land, $5 an acre for all land having timber on it suitable for lumber, and $2 an acre for all other land classified as timbered land but not such as would be suitable for making lumber.

The lands were then ordered to be placed on the open market in the county or land district in which they were situated and sold under a system of competitive bids which the land board was directed to prepare and prescribe. No one could purchase more than one section of agricultural land or seven sections of pasture land. Agricultural land could be sold only to actual settlers. Corporations were also prohibited from acquiring title to more than one section of any kind in any one county. A purchaser might sell his land at any time after he had made the first payment by filing an authenticated transfer to the vendee. In this event the vendee assumed all the obligations and liabilities of the original purchaser.

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[25] *Ibid.*, 2: 393; also Sayles, *Early Laws of Texas*, 1: 319 and 2: 447, and *Revised Civil Statutes, 1911*, p. xliii and 560 for university lands.

[26] Practically all of the laws passed since 1883 which relate to the sale of public lands refer expressly to the sale and lease of the "free school, university and asylum lands." Unless otherwise designated hereafter the term "reserved lands" as used in this monograph includes all of the lands reserved and appropriated for these purposes.

[27] *Laws of Texas*, 1879, *Special Session*, p. 23; also 1881, p. 119.

[28] *Civil Statutes*, (1897), 2: 1972; *Laws of Texas*, 1883, p. 85.

The purchaser was required to pay one-thirtieth of the amount bid in cash and assume an obligation to pay the balance in yearly installments consisting of one-thirtieth of the whole price. He also assumed an obligation to pay interest on the whole amount of the unpaid purchase money at the rate of five per cent. Failure to pay an annual installment of the purchase price would not work a forfeiture of the land until the whole sum was due, but failure to pay the interest when due would forfeit the land immediately.

Pasture lands, not timbered, could be leased in any quantity suitable for stock and ranch purposes for a period of ten years at a minimum annual rate of four cents an acre. The school land board was directed, however, to work out a system of competitive bidding for leases similar to that of sales. When applications were made for both sale and lease of the same section, the sale was to have the preference.

A great deal of fault was found with the School Land Board as an administrative body because it was composed of the executive officers of the state, each one of whom was chosen for his special fitness to represent the state in a political capacity.[29] Each member was thus overloaded with work in his own department. In addition to this, the board was too bulky and unwieldy to serve the state as a business agent. Consequently, the governor and the commissioner of the general land office recommended that the legislature place the authority to sell and lease the public lands all in one individual who would be able to devote practically his whole time and ability to this business and who should be required to give bond for the faithful performance of his duty. The law was, accordingly, amended in 1887. The School Land Board was abolished, but instead of authorizing a special officer to do this work the whole responsibility was placed upon the commissioner of the general land office in addition to his other duties. He was directed to dispose of the public lands according to law and to make such additional regulations as might be necessary and not inconsistent with the constitution.

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[29] Commissioner of the General Land Office, *Biennial Report*, 1886.

In addition to the foregoing change, the law of 1887 directed the commissioner of the land office to have all the lands that were in demand for immediate settlement "carefully and skillfully classified and valued."[30] To assist him in doing this work he was authorized to appoint, with the approval of the governor, as many competent state agents as might be necessary and to pay them a salary not to exceed $150 a month and their traveling expenses. These state agents were required personally to examine the land desired for settlement and to classify it as agricultural, pasture or timber land. They were also required to make an accurate plot of each section examined which would show the topography of the land, the quality of its soil, its proximity to water, the streams and other sources of water supply, noting their location and paying *special attention* to such streams as might afford permanent water; the relative proportions of timber and open land and their location, and also the quality and kind of timber.

Upon the basis of the information furnished by the state agents, the commissioner was required to value the land and to notify the county clerk of each county of the valuation fixed upon each section of land in his county and in each county attached to it for judicial purposes. These valuations were required to be kept by the county clerk in a well-bound book which should always be open to public inspection. Any prospective purchaser might thus ascertain the valuation placed upon the lands by the commissioner and expect to acquire them by making an application to purchase on a form prescribed by law in which he offered not less than the price fixed by the commissioner. The lands could not be sold in any case, however, for less than $2 an acre for pasture lands, $3 an acre for all sections having permanent water thereon or bordering thereon, and $5 an acre for all timber lands which were defined as those valuable chiefly for the timber on them. They could not be sold in quantities to exceed 640 acres, except dry pasture lands which might be sold to settlers in quantities not to exceed four sections, nor under any circumstances to a corporation, either foreign or domestic. Moreover, all sales to a settler were required to be made on the expressed condition that any subsequent sale or transfer to a corporation, either immediate or remote, would *ipso facto* terminate the title of the purchaser and the land be forfeited to the state to revert to the fund to which it formerly belonged. Purchasers were also required to make an affidavit to the effect that they were not acting in collusion with others for the purpose of buying the land for any other person or corporation and that no other person was directly or indirectly interested in the purchase of the same.

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[30] *Laws of Texas*, 1887, p. 83.

In most other respects the law was quite similar to the act of 1883. The credit, however, which was allowed on the purchase price was extended from thirty years to forty years, but on the same conditions. Moreover, any actual settler who had purchased under former laws, but whose land had been forfeited because of failure to pay the yearly installments or interest on the purchase price, was given a six months' prior right after the passage of this law in which to repurchase his land at such a price as the unpaid principal at the time of the default and the interest due thereon would aggregate. Thereafter he would be governed by the same penalties, restrictions and requirements as were imposed upon other purchasers. The time of leasing contracts was also shortened from ten years to five years.

More than 14,000 sales aggregating nearly 6,400,000 acres were made according to the provisions of this act.[31] The law is generally believed to have been a good one and it is said that if it had been amended in two particulars, namely, one reducing the rate of interest and another providing for forfeitures and the collection of obligations, the school fund would have profited much by its continued operation.[32]

But certain forces were at work in the legislature which had in mind the opening of the school lands for speculative purposes under the guise of providing homes for actual settlers. The result of this effort was the repeal of the law in 1887 and the substitution of the act of 1895.[33] Whatever the ostensible purpose of this new law may have been, the results of its operation show conclusively that it was designed and constructed in such a way as to yield a handsome profit to speculators rather than an income to the school fund.

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[31] Commissioner of the General Land Office, *Biennial Report*, 1898, pp. 11-12.

[32] *Ibid.*, 1902, p. 52.

Within three years after the passage of the law of 1895, 8,385 sales approximating 4,000,000 acres of land that had been sold under former laws for not less than $2 an acre, with interest at five per cent, had been forfeited for the nonpayment of interest.[34] During the same period 12,056 sales aggregating 5,538,723 acres were sold according to the terms of the new act, mostly as grazing land at the rate of $1 an acre with interest at three per cent. It has been estimated that the school fund thereby lost not less than $8,000,000, and probably as much as $12,000,000.[35]

The explanation of these enormous forfeitures lies in the fact that the purchase price was reduced fifty per cent and that the land could be reclassified and revalued by local boards. The new law took the power to classify and value the school lands out of the hands of the state land commissioner and his special agents and placed it in the hands of a local board composed of citizens of the county in which the school lands were situated. This board had not only the power to classify and value lands theretofore unclassified, but also to revise the classifications that had been made by the land commissioner and his special agents. It seems that these local boards were largely made up of county judges and county commissioners and it is asserted in official reports that many of these men were either directly interested themselves in the purchase of reserved lands at a reduced valuation or they had a client or constituency to serve who wanted to buy at a reduced price. The law further gave a purchaser who had forfeited land secured under the former laws, *ninety days' prior right to repurchase* under the terms of the new act. The result was inevitable. To use the exact language of the commissioner, "Therefore, while it was ruinous to the school fund, it was poor business on his (the former purchaser's) part if he did not decline to pay the interest on a \$2 or \$3 purchase, let the land be forfeited to the state, and again buy it at \$1 per acre at a reduced rate of interest."[36]

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[33] *Laws of Texas*, 1895, p. 63.

[34] Commissioner of the General Land Office, *Biennial Report*, 1898, pp. 11-12.

[35] *Ibid.*, 1902, p. 26.

The writer can describe the way in which this law operated in no better or more forceful terms than those used by the Land Commissioner, Charles Rogan, in his biennial report in 1902. He says:[37]

> "The laws of 1895, 1897, and 1901 are full of contradictions and glaring inconsistencies. Every time the law has been tinkered with, since the passage of the Act of 1887, it has been against the best interest of the school fund. While the laws were enacted ostensibly for the benefit of the actual settler, he has derived but little benefit from them. The chief beneficiaries have been land agents, speculators and bonus hunters, and finally the ranch men. The cream of the school land has been sold. It has passed beyond the control of legislation, or the jurisdiction of the state under improvident laws. It has been sold to people who swore that they were actual settlers, and who swore that they were purchasing the same for a home. But the acts of 1895 and 1897 authorized the wholesale reduction in value of this land from \$2.00 and \$3.00 per acre to \$1.00 and \$1.50 per acre. It also required the sale to be made on forty years' time at only three per cent interest, requiring the payment of only one-fortieth of the principal in cash, which was most usually \$16 on 640 acres of land. It also permitted him to purchase as much as four sections, with the privilege of selling any or all of this land so purchased, at any time. These provisions were only a delusion and a snare. It did not procure actual bona fide settlers in a majority of cases, although no sales have been made except to those who swore they were such. It only invited wholesale speculation on the part of purchasers and land agents, and clothed in the robes of a settler only such makeshift of settlement as was made in most cases until such time as they could swear to three years' occupancy, and sell to some one else, in many instances to large land holders for a good round bonus, while many of them sold their claims within a week or a month after purchasing the same from the state."

Many strange and remarkable transactions are recorded in the annals of school land legislation,[38] but this one is without parallel. A near approach to it, perhaps, in the way of valuations reduced by legislative authority, is found in Michigan where the school fund lost $175,000 as the result of a law which permitted a revaluation of the land and a credit to the purchaser of the difference between this appraised value and his contract price.[39] But the modest sum of $175,000 shrinks into sheer insignificance in comparison with more than $8,000,000.

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[36] *Ibid.*, p. 55.

[37] *Ibid.*, p. 52.

[38] For a good account of losses incurred to permanent public school funds throughout the United States, see Swift, *op. cit.* pp. 129–159.

In spite of the fact that the defects of this law and the enormous losses which it was entailing upon the school fund were repeatedly pointed out by successive land commissioners in such statements as the one just quoted, it remained on the statute books for ten years without any substantial modification or improvement. By far the largest and best part of the school lands were sold under its disadvantageous terms. Commissioner J. J. Terrell and his assistant, J. T. Robison, who is the present commissioner, however, worked out a plan for selling the remainder of the reserved lands by sealed competitive bids. This plan was enacted into law in 1905 and has made possible the realization for the school fund of very nearly the whole market value of the land which still remained to the credit of the various funds,[40] and which has been sold since that time.

In addition to the feature of sealed competitive bids, the new law abolished the system of classification and valuation by citizens of the county in which the land is situated. The land commissioner is now authorized to "classify or reclassify, value or revalue" any of the public lands, except those which belong to the university fund, whenever the public interest may require such classification or valuation. Any necessary changes in the valuation may even be made after the land has been advertised, but this is done only in extraordinary circumstances.

Owing to the fact that with the passage of this law the state gave up that part of its school land policy which had to do with the leasing of reserved lands, the expiration of a lease serves to bring the land immediately upon the market; and in cases of cancellation, the land comes on the market ninety days thereafter. The commissioner is required to give publicity to these facts, insofar as practicable, ninety days before the land is actually offered for sale. In order to do this he is authorized to prepare and print a list or lists of such land at the expense of the state and send them out in the mail to every person requesting them. This list as it has been subsequently published by the commissioner contains the designation of the tracts of land for sale, the date on which they will come on the market, the name of the lessee and the number of his lease, the name of the grantee, the number of acres, the minimum valuation fixed by the commissioner and the classification as agricultural, grazing, timber or mineral land. It also contains directions to prospective buyers in regard to the method of making their applications for purchase and an epitome of the law under which the lands are to be sold. With the aid of this list and a Land Office map of the county in which he desires to locate, a purchaser can find the locality of any survey without the assistance of a land or real estate agent. The terms of the sale are payment in cash of one-fortieth of the purchase price and the balance in equal annual installments with interest at three per cent.[41]

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[39] See Appendix III, 1.

[40] *Laws of Texas*, 1905, p. 159.

With the exception of a few amendments of minor importance, as far as general principles are concerned, the law of 1905 is the one under which the public lands of Texas are now being acquired by private owners. The gain to the school fund during the first year after its enactment was more than $3,500,000 in the sale of 4,819,659 acres.[42] Moreover, the total increase to the school fund under this "highest bidder" or "competitive bidding" law was $24,514,947.18 up to the close of the fiscal year 1914.[43] In fact, the land commissioner says that some of this land which would have been purchased at $1 and $2 an acre has proved so valuable "that people are almost tumbling over each other to get it at from $12 to $22 per acre."[44]

The university and asylum lands were always included in the laws providing for the sale of free school land until 1895.[45] At that time the control and management of the university land was taken out of the hands of the land commissioner and vested in the board of regents of the university. The only restriction placed upon the regents in their disposition of these lands was that they should not be sold for a lower price per acre than the same class of land belonging to other funds. The policy of the board, however, has been to retain the lands and lease them. Out of a total of 2,289,682 acres appropriated for this purpose 2,072,225 acres were under lease in 1908 at an average rate of 4.9 cents an acre and yielded a net return to the university of $103,312.83 for that year.[46] The management of the asylum lands was left in the hands of the land commissioner and they have been disposed of in the same manner and under the same laws as the free school lands.

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[41] See Appendix III, J.

[42] Commissioner of the General Land Office, *Biennial Report*, 1908, pp. 3-4.

[43] *Ibid.*, 1914, p. 3.

[44] *Ibid.*, 1908, p. 4.

[45] *Civil Statutes*, 1897, 2: 1513.

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[46] See Appendix III, k.

CHAPTER VI

LAND GRANTS FOR EDUCATIONAL AND ELEEMOSYNARY INSTITUTIONS (Continued)

TIMBER LANDS

The use of timber on the public lands of Texas was wholly unrestricted by legislative regulation until after 1879.[1] The only reference to this subject that appears in the statutes is found in the charters of some early railway companies and in the general statutes relating to the construction of railways. In these instances the corporation is given a right-of-way across the public lands and also the right to use such timber and other building material found upon them as might be necessary for the construction of the proposed lines.

An attempt was made in 1858, however, to make the laws relating to the destruction of timber on the lands of a private owner applicable also to public lands, but this attempt failed. A statute of 1848 made it a misdemeanor for any person wilfully and knowingly to cut down, carry away, or destroy any tree or timber on land not his own.[2] In 1856 this law was amended so as to fix the penalty for its violation at three times the value of the timber unlawfully cut down or removed.[3] Two years later James Howard was indicted for having cut timber on land not his own inasmuch as he had cut and removed timber from lands belonging to the state, and he was being prosecuted under the statute of 1848. The Supreme Court quashed the indictment, however, on the ground that the term "owner" as used in the statutes applied only to private holders and not to the state.[4]

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[1] *Civil Statutes*, 2: 423.

[2] Hartley, *Digest of the Laws of Texas*, 203.

[3] Paschal, *Digest of the Laws of Texas*, 461.

[4] *State v. Howard*, 21 Texas 416, 1858.

Since the act under which Howard was being prosecuted did not expressly declare the cutting of timber on public lands to be an offense, the court held that such a construction as to its intent would not be fair or reasonable. It was said in the opinion that the state is inviting settlers to occupy her lands; and though it has not authorized, yet is has not prohibited, the conversion of public timber to private use.

Since no distinction between agricultural and timber lands was made in the statutes, most of the timber lands have been transferred to private owners in the same manner and on the same terms as agricultural lands. The only exception to this rule is found in the disposition of the small quantity of timber lands that happened to be included in the regular surveys and reservations of the public domain for the free school, university and asylum funds. If the land was valuable chiefly for the timber which stood on it, the grantee acquired title to the land with the timber as a preemption claim, a homestead donation or a grant to an internal improvement company just as though the land were valuable chiefly for its wheat or cotton producing qualities.

Approximately 300,000 acres of timber lands were included in the reservations and appropriations that were made to the public school, university and asylum funds.[5] Since the passage of the law of 1879 providing for the sale of all these lands, a distinction has been made between timber, agricultural and grazing lands. Generally speaking, the price of timber lands has not been lower than five dollars an acre and credit has not been so freely extended to the purchaser as in the sale of agricultural and grazing lands. The protection afforded by such restrictions was greatly offset, however, by a provision in the law of 1895 which authorized the sale of timber on timber lands at less than five dollars an acre whenever the land commissioner ascertained by approved agents that the land contained timber of but little value. The use of timber on reserved lands has also been considerably restricted, especially to the extent of prohibiting the removal of more timber than was necessary for clearing and improving the land, or for firewood and building purposes. In some instances the timber and the lands have been sold together, and in others the timber has been sold; and after its removal, the land has been sold as agricultural and grazing land. Since 1905, land on which there is merchantable timber cannot be purchased until the timber has been paid for in cash.[6]

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[5] Commissioner of the General Land Office, *Biennial Report*, 1904, p. 9.

The timber lands of Texas comprise more than 42,000 square miles, an area half as large as the state of Kansas and larger than the state of Ohio.[7] Approximately five-sixths of this area has been described as "merchantable forest" from which nearly a billion board feet of lumber are cut annually. The lumber industry in Texas is exceeded only by the cotton and cattle industries, and the product secured is described in a United States government bulletin as consisting especially of those varieties of lumber as are suitable for the manufacture of furniture, wagon timbers, implement handles and all manner of things now shipped into the state from long distances, to say nothing of the great quantities of ties, staves and posts that are being secured from ordinary grades of oak.[8] In 1910 there were 799 establishments in Texas engaged in the manufacture of lumber and timber products which employed approximately 24,000 wage earners and turned out an annual product valued at $32,201,000.[9] During the decade, 1900 to 1910, the lumber industry in Texas practically doubled as far as the number of persons engaged in the industry and the value of the product

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[6] For statutes herein referred to, see *Civil Statutes*, 1897, 2: 1955, 1966, 1972, and 1976; also *Laws of Texas*, 1905, p. 159.

[7] This estimate is compiled from Bray, W. L., *Forest Resources of Texas*, Bulletin of the United States Forestry Bureau, No. 47, 1904, pp. 20–24, as follows:

Longleaf Forests of the Fayette Prairie	5,000 sq. miles
Loblolly Pine and Hardwood Forests of Interior Coast Plain	7,000 sq. miles
Hardwood and Shortleaf Forests of Lignitic Belt	30,000 sq. miles
Total	42,000 sq. miles

[8] *Ibid.*, p. 37.

[9] United States *Census Reports*, 1910, 8: 614; the corresponding figures for 1900 were as follows:

Number of establishments	559
Average number of wage earners	12,455
Value of the product	$17,782,000

were concerned. Moreover, the quantity of standing timber, if properly cared for, is said to be sufficient to support these establishments for many years and to yield large profits, both to private owners and to the state, if it is not wasted before the market for lumber is fully developed.

In spite of this fact the value of the timber lands in Texas, as such, is being rapidly destroyed and the timber on them wasted. This condition is due to the fact that the soil is so rich and the land so valuable for agricultural purposes that field after field of "unsurpassed forest" is being deadened and destroyed merely to get rid of the trees.[10] The general usefulness of the timber lands is also being greatly diminished because those communities which are dependent upon standing timber for their water supply and protection against floods and silt are exposed to immense losses on account of the removal and destruction of the forests by private land owners. This wasteful and destructive process has been carried on so long that unless certain forces now at work impoverishing the resources of the state are restrained, conditions will soon prevail which will necessitate remedial measures at a very heavy public expense.[11]

Originally the state of Texas owned all the timber lands within its borders, except a very small number of acres which had been patented to private owners prior to its annexation. Ninety-five per cent of these lands are now private property.[12] The income which the state might have derived from a judicious transfer of this property can hardly be estimated at this time, but the income which it did obtain from them is comparatively insignificant because most of these lands were disposed of as agricultural lands. Even timbered school lands were frequently sold "at prices if not fixed, at least suggested by the purchaser,"[13] and, consequently, for much less than their market value. The land commissioner says there cannot be any question but that the pursuance of this policy has cost the school fund "many, many millions of dollars."[14] Much of the timber is also reported to have been stolen from the school lands.

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[10] See Appendix III, l.

[11] See Appendix III, m.

[12] *Ibid.*, p. 37.

[13] Commissioner of the General Land Office. *Biennial Report*, 1904, p. 9.

[14] *Ibid.*

To obtain the market value of its timber lands and to prescribe such conditions in their transfer as would prevent destruction and insure the intelligent use of the timber, if not the reforestation of the lands, should have been the essential features of the state's policy in disposing of them. Neither of these purposes, however, was accomplished. The policy was deficient, therefore, insofar as it permitted private owners to acquire these lands without making a commensurate return for them to the public treasury. It was also incomprehensive insofar as it failed to prevent waste of the forests and protect the future value, not only of the forest lands, but also of the surrounding agricultural lands.

MINERAL LANDS

Under the laws of Spain, minerals were the property of the sovereign and minute regulations were established in order to encourage their development by private enterprise and to secure the payment of a tribute for the privilege of operating the mines.[15] Mexico also tenaciously adhered to this policy and endeavored to dispose of its mineral rights in such a way as to make them a source of revenue. The national colonization law provided that settlers should be free to promote any kind of industry; that they should be permitted to work mines of every description, but that they should make agreements with the national executive in regard to those mines which pertained to the national revenue, and that they should subject themselves in working the others to the ordinances and duties that were then or might thereafter be established in regard to the business of mining.

An illustration of the way in which Mexico disposed of its mines and mineral rights is found in the franchise granted to J. L. Woodbury and John Cameron. These men were given an exclusive privilege in 1828 to work the iron and coal mines in the state of Coahuila and Texas for a period of twenty-three years and all other persons were prohibited from working such mines without their permission, except those whose mines had been discovered and legally specified and proclaimed before the promulgation of this decree.[16] The franchise carried with it the privilege of introducing professional artisans for the purpose of smelting and separating the metal, but it required the grantees to prefer the natives of the country for common mining laborers. They were also required under penalty of forfeiture of their contract to have introduced the machinery and necessary utensils, and to have erected within a period of three years from the date of the franchise, in at least one of the departments of the state, the proper buildings for working and "elaborating" the iron. In addition to this, they were restrained from selling iron of superior quality and of no regular shape in the state at a price exceeding five-eighths of a rial a pound, but no special royalties, taxes, or obligations other than those already established in the mining ordinances were imposed upon them.

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[15] Sayles, *Real Estate Laws of Texas*, 1: 436.

Since Mexico had so carefully reserved and protected its mines and mineral rights as property of the government, Texas came into full possession of all those within its borders at the time it gained its independence from Mexico. It also adhered to the policy of the Spanish and Mexican governments for more than thirty years and continued the reservations that had been previously made, but does not seem to have done much during that period to encourage the development of the mines or to have secured any benefit from the use of its mineral rights. As previously stated, in 1840 the common law of England was made the rule of decision in the Republic of Texas and the same act which adopted the common law also repealed the Mexican laws previously in force in the Republic except those which related exclusively to grants and the colonization of lands in the state of Coahuila and Texas and such other laws as related to the reservation of salt-lakes, licks and salt-springs and to mines and minerals of every description.[17] Since all the laws in force in the Republic of Texas prior to annexation remained operative until they expired by their own limitation or were repealed,[18] the mineral wealth of the community was thus reserved to the state until it was subsequently released to the owners of the soil. This did not mean that a private holder could not acquire title in fee to land on which minerals might be known then, or later be found, to exist; but it did mean that title to the lands did not carry with it a right to the minerals that might be found in them.

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[16] *Laws and Decrees of Coahuila and Texas*, p. 98.

[17] See copy of the act in note on page 20.

[18] *Constitution of 1845*, Art. XIII, Section 3; Paschal, *Digest of the Laws of Texas*, p. 72.

This very question came up for judicial determination in 1862, twenty-five years after the law had been passed which made these reservations. It was contended that all lands containing minerals were separated from the mass of the public domain and were thereby withdrawn from individual appropriation by the location on them of any kind of certificate or claim to land. But the Supreme Court through Justice Moore denied the validity of this contention.[19] It was held that the object and purpose of the legislature was simply to reserve to the Republic the salt-springs, gold and silver mines, copper, lead and other minerals; and that while the mineral resources of the country that were then known to exist, or that might afterwards be developed, were thereby secured to the government, no embarrassment was placed in the way of a citizen in acquiring a fee in the quantum of the land to which his certificate or scrip entitled him. But such a reservation carries with it the right of the state or any of its agents to enter upon lands located by individuals in which minerals may be found, and to dig for and to carry them away and all other such incidents as are necessary to make the reservation available to the state. The court said it thought it was evident that the legislature intended to do nothing more than to secure by an express reservation the same right to all minerals, when it granted land, that was by the common law impliedly reserved to the King as to royal mines, and it quoted Rockwell's *Spanish and Mexican Law* to the effect

> "That a property may be acquired in mines which will be quite independent of the property in the lands in which they are situated. In this condition, the minerals, of whatever character they may be, will, of course, still form parts of the land itself and will constitute land in strictly legal acceptation."[20]

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[19] *Cowan v. Hardeman*, 26 Texas, 217, 1862.

[20] *Ibid.*, p. 223.

Chief Justice Wheeler, in giving a concurring opinion in this case, said that these reservations afford evidences of the carefulness of the legislature to guard the interests of the state in her islands, salt springs and minerals, and the fact that the reservation was not annihilated by the repealing section of the act which adopted the common law of England, manifests "a settled policy and purpose on the part of the legislature to protect the interest of the state in the enumerated objects and to guard against their appropriation to the purposes of private speculation."[21] In discussing the relation that existed between the owner of the land and the state and the right of the state to enter upon the land of a private owner in order to develop or use its mineral resources, he also said:

> "We hold that the patent is not absolutely and necessarily void because there is found to be a salt spring or minerals upon the land embraced within the grant. And not being void, it can not be impeached and avoided by a mere intruder. Insofar as concerns the use, it may, however, be avoided in part or in whole by the state in the exercise of its reserved right in the salt-spring or minerals embraced within it. The state must have the easement of going upon the land for this purpose; and if to the full enjoyment of the right of the state, it should become necessary to use the whole of the land, timber and water upon the tract, the right of the state to an easement to that extent can not, I apprehend, be questioned."[22]

Within four years after the decision in the case of *Cowan v. Hardeman* had been rendered, all mines, minerals, salines, oil springs and wells and all precious metals or minerals were declared by constitutional enactment to be the property of the rightful owner of the land on which the same might be situated and subject to such uniform rates of taxation as the legislature might impose.[23] A similar provision releasing to the owner of the soil all mines or minerals that may be on the same, subject to taxation as other property, is contained in the present constitution of the state.[24] Consequently, the state has had no direct control over any of the minerals within its borders since 1876 except such as might be found on the public school, university or asylum lands.

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[21] *Ibid.*, p. 224.

[22] *Ibid.*, p. 224.

[23] *Constitution of Texas, as amended*, 1866, Ordinance Number XV, Paschal, *Digest of the Laws of Texas*, p. 952.

[24] *Constitution of 1876*, Art. 14, Sec. 7; *Civil Statutes*, 1897, 2: 1445.

In this way all the mineral wealth of the state, except that contained in its reserved lands, passed, as by the mere stroke of a pen, into the hands of private owners without the payment of one cent of compensation or royalty. Such a transfer was a remarkable piece of legislation. But it was enacted as a constitutional provision, and, therefore, had the sanction of the people. The release of practically all future rights to minerals within the state without any compensation, and especially when great care had been exercised for years to preserve them indicates a radical change of sentiment for which it is difficult to assign a reason. It can apparently be explained only on the ground that the people generally believed that such a policy would encourage the development of the mineral wealth and that future taxation would yield a greater income than the reservation of mineral rights had done. Since 1876 mineral lands belonging to the school fund have been sold for $57,368 in cash and notes.[25] Consequently, the transfer of mineral rights and lands to private owners has not been an important source of general income to the public treasury. But the value of the mines and quarries assessed as real property in 1900 was $7,017,182 which was equivalent to practically one-fourth of the value of the land and buildings of manufactories assessed for the same purpose. Products valued at $267,603,708 were taken from Texas mines during the period 1892 to 1913.[26] Doubtless more may be expected in the future, therefore, in the way of public income from this source than has been realized in the past.

Nothing whatsoever was done in the way of disposing of the minerals on reserved lands until 1883. At this time the school land board, which had been authorized to sell and lease these lands, was also authorized in a separate act to control and manage the disposition and use of minerals that might be found in them.[27] The minerals were reserved from the operation of laws designed for the sale and lease of the surface land, and the board was directed to dispose of them for the benefit of the funds to which the land belonged.

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[25] Commissioners of the General Land Office, *Biennial Reports*, 1904, p. 9, and 1906, p. 15.

[26] United States Census Reports, *Wealth, Debt and Taxation*, 1907, p. 17, See also Scott, *op. cit.* 107–116.

The reservation of "all minerals" from the operation of laws providing for the sale and lease of reserved lands contained in the law of 1883 was afterwards changed to a reservation of "all public lands containing valuable mineral deposits" and the Geological and Mineralogical Survey was directed to designate such tracts as were apparently mineral bearing. The courts have since declared that the reservation of 1883 was impliedly repealed by this change in the law and that a locator on land since that time is not subject to laws reserving minerals to the state unless the land was designated as mineral land.[28] The Commissioner has power to change the classification of land from grazing or agricultural to mineral; but if the land has been purchased while it is classified as grazing or agricultural, the purchaser is entitled to all the minerals that may be found in it.[29] Lands which are now classified as mineral lands may be sold for grazing or agricultural purposes, but all sales of such lands are made upon the express condition that the minerals shall be reserved to the fund to which the land belongs.[30]

According to the law of 1883, owners of mining rights were permitted to work mines for their own benefit, but they were required to pay the state five per cent of the gross receipts from such operations.[31] They were also required to work the mines according to the regulations which the school land board prescribed, to do $200 worth of work on them each year, and to furnish proof of the same under penalty of forfeiture. The school land board was abolished, however, in 1887 and all previous laws relating to the sale and lease of reserved lands were repealed.[32] Owing to the suspension of the authority of the school land board, the mining laws, since they had been enacted in separate acts, were in a state of great confusion, and, consequently, two years later the legislature passed a law "to promote the development of the mining resources of the state."[33] The plan embodied in it was designed to realize an income to the school fund of $50 a year from each mine claim regardless of the amount of mineral obtained from it. Any time within five years after the mining claim had been secured the owner might obtain a patent for it by paying the purchase price fixed by law which varied from ten to twenty-five dollars an acre according to the kind of ore that was being mined and the distance of the mine from a railroad.

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[27] *Laws of Texas*, 1883, p. 100.

[28] *Hell v. Martin*, 70 S. W., 430, 1902.

[29] *Colquit, Tigner Mining Co. v. Rogan*, 68 S. W. 154, 1902; also *Schendell v. Rogan*, 63 S. W. 1001, 1901.

[30] *Laws of Texas*, 1907, p. 495.

[31] *Laws of Texas*, 1883, p. 100.

[32] *Ibid.*, 1887, p. 83.

In 1895 all former plans were abandoned and the legislature at this time passed a law intended *"to better and more fully promote* the development of the mining resources of the state."[34] The annual tax of $50 was removed and any individual or corporation was permitted to secure a claim to mineral lands varying in size from twenty-one to six hundred and forty acres according to the kind of mineral obtained. The claimant was protected in his right to work the mine for five years and dispose of its product for his own benefit without the payment of one cent for the privilege. If by the end of that time he considered the mine a valuable one, he could obtain a patent for it by the payment of not more than $25 an acre for the land. In addition to this, a credit of ten years with interest at four per cent was extended to him on this sum. If the good qualities of this law are to be determined by the amount of revenue which it brought into the school fund, it can not be said to have been well suited to the purposes it was designed to accomplish. The commissioner of the general land office says it should have been entitled "An Act to authorize persons to rob our public free school fund at their own pleasure," for such were largely its results.[35]

In this way the whole basis for deriving a revenue from the mineral wealth in the lands reserved for the benefit of the free school and other public funds was changed from that of a five per cent gross-receipts tax at one time, and an annual tax of fifty dollars on each claim at another, to one from which the state derived no benefit whatsoever unless the owner of the claim saw fit to secure a patent for the land for which he paid, in many instances, a ridiculously low price in comparison with the value of the ore that was being obtained from the mine.

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[33] *Ibid.*, 1889, p. 116.
[34] *Ibid.*, 1895, p. 197.
[35] Commissioner of the General Land Office, *Biennial Report*, 1904, p. 9.

The mining statutes, therefore, have been almost a complete failure as far as the question of obtaining an income for the school fund is concerned. The reports of the general land office show that 1,931 applications for mining claims were made for all classes of metals during the first twenty-one years after the passage of the law of 1883 and that 1,595 of these applications were accepted.[36] There were 937 final purchase applications made from these claims, of which only 427 were in good standing in 1904. The net result is that 39 claims had been patented by September 1, 1904, for which the school fund received only $17,972. The Commissioner also says that he is informed on good authority that one section of land in Brewster county, adjoining a school section, was sold for $125,000; also that during the year 1902 the total production of quicksilver in the Terlingua district was 5,319 flasks which, at $45 a flask, was valued at $239,355. Consequently, it is conclusively shown that the value of the net output of one ore in one district during only one year was more than thirteen times the total amount that had been realized by the state from all its mineral wealth in twenty-one years.

One reason for the failure of the mining statutes, which is of no little importance, is found in the fact that the Geological Survey did not proceed to examine and classify the mineral lands except in El Paso, Jeff Davis and Presidio counties, as it was directed to do in the law of 1889.[37] Its failure was due to the fact that the survey was not to proceed until after a map had been prepared by the Commissioner of the General Land Office which should show the location of all public school, university and asylum lands. This map was never prepared, for the legislature failed to appropriate the money to cover the expenses of preparation. Moreover, the Survey itself ceased to exist after 1892 because appropriations for its maintenance were also withheld. After the discontinuance of the Survey, no state authority existed for examining and classifying lands as mineral bearing. Consequently, the classifications contemplated by the law of 1889 which "was unquestionably designed for the purpose of bringing a revenue to the state from mineral lands" were never made. This sort of shiftlessness is typical of the general lack of interest which the successive legislatures of Texas have displayed in the development of the mineral resources of the state.

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[36] *Ibid.*

[37] Phillips, W. B., *The Mining Laws of Texas*, Bulletin of the University of Texas, No. 21, 1903, pp. 18–19.

Another reason for this failure is the fact that an operator could work a mine five years under the law of 1895 and dispose of the whole product for his own benefit without paying one cent into the public treasury. It will be sufficient at this point, however, to say that the legislature in 1905 amended the law so that no man could thereafter work a mine for five years, extract all the valuable ore from it, and then forfeit the empty mine to the state without compensating the school fund.[38] The claimant has since been required to make a cash payment each year, together with the interest on the deferred principal. Since the passage of this act, the school fund has received $39,396 in cash and notes which is more than double the *total amount* received from the sale of mineral lands during the twenty-one years preceding September 1, 1904.[39]

It has been alleged that insecurity of mineral land ownership and inability of mining laws to protect the industry have also been a reason for the slow progress which this industry has made in Texas, and hence the insignificance of the revenue derived therefrom. A comparison of these laws with the similar ones of the United States, however, has been made by a mining engineer and it is confidently asserted that they "afford sufficient protection to the mining industry."[40] There are very few differences between the mining laws of Texas and those of the United States and these are said to be almost invariably in favor of the prospector and miner. "Where they [laws of Texas] fail to afford protection it is to the State, not to the operator."[41]

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[38] *Laws of Texas*, 1905, 159.

[39] Commissioner of the General Land Office, *Biennial Report*, 1906, p. 14; and 1908, p. 15.

[40] Phillips, W. B., *The Mining Laws of Texas*, Bulletin of the University of Texas, No. 21, 1903, p. 25.

The apparent policy of the state in regard to its minerals has evidently been one of *laissez-faire*. It has been fittingly expressed by a resident of one of the principal mining districts, in the following language:[42]

> "Let the state pursue a liberal policy toward the prospector, the miner, and the actual settler, whether he be a farmer or stock raiser, in the disposition of her mineral and other school lands, and she may safely depend, in a large measure, upon them to discover and develop whatever natural resources such lands may possess. If they possess any, the State will be amply compensated in the more rapid development and settling of the country, the increase of taxable values, etc., for whatever she may suffer in the low price she has received for the land, or in her failure to secure a royalty upon the minerals taken out, just as the United States government has been more than compensated for the low price she has obtained from her mineral lands by the rapid development of a number of the western states and territories."

The disastrous effect of this *laissez-faire* policy, as applied to private ownership of timber lands in Texas has already been seen. There is no evidence to show that private exploitation of the mineral resources has been attended by the same destructive and wasteful consequences. But it is already a debatable question in the minds of many and is vigorously asserted by others that the pursuit of such a policy by the federal government has not been so advantageous as it was long supposed to be. At any rate it would seem to behoove the state to look well toward the future disposition of such mineral wealth as it still possesses.

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[41] *Ibid.*

[42] Quoted by Phillips, W. B., in *Mining Laws of Texas*, Bulletin of the University of Texas, No. 21, 1903, p. 29.

CHAPTER VII

LAND GRANTS FOR EDUCATIONAL AND ELEEMOSYNARY INSTITUTIONS (Concluded)

Permanent Funds

Under all the various laws enacted for this purpose approximately 52,000,000 acres of land have been appropriated to permanent funds. These lands include more than 70,000 square miles, an area larger than that of the whole state of Missouri and almost equal to the area of Ohio and Indiana combined. In comparison with the public institutions of other states, those of Texas have been magnificently endowed. California, for instance, received 6,719,324 acres from the United States in its donation of sections 16 and 36 and this was the largest grant of land that has ever been held by any state other than Texas for public school purposes. But the state and county public school funds in Texas have received more than 49,000,000 acres of land, a land endowment which is nearly seven times as large as that ever held by any other state. Moreover, the university, with its more than 2,000,000 acres is equally well provided for. The following table shows the distribution of lands among the various funds:[1]

TABLE I.—SHOWING APPROPRIATIONS OF SCHOOL LANDS IN TEXAS

Public school lands granted to the state fund	45,000,000 acres
Public school lands granted to counties	4,229,166 acres
Lands granted to the university	2,289,225 acres
Lands granted to asylums	400,000 acres
Total	51,918,391 acres

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[1] The foregoing table has been compiled from the *Reports of the General Land Office* for 1902 (page 37) and for 1910 (page 30).

The funds which have been built up from the sale of reserved lands, apart from those appropriated to counties for public school purposes, amounted to $69,791,908.27 in 1914. In addition to this, there are still more than 4,000,000 acres of unsold land belonging to these funds which is yielding an annual rental of from three to eight cents an acre. Of this amount the public schools had $66,700,267.79 in cash and securities belonging to the state permanent fund and 1,847,445 acres of unsold land. The estimated income due to this fund August 31, 1914, from interest and rents was $2,189,650.77.

Similarly the university had a permanent fund in 1908 of $652,653.08 in cash and securities and 2,072,225 acres of unsold land under lease.[2] An accurate statement of the total amount of the cash and securities that have been derived from the sale of county school lands cannot be made at this time because the reports of the various counties are not available for this purpose.

INVESTMENT OF PERMANENT FUNDS

The first investments of permanent funds were made in railway bonds which gave the state a lien on all the physical property of the company as security for the loan.[3] These investments were made as much for the purpose of assisting the railway companies as for that of obtaining a safe investment of the money and a regular income to the fund. During the first period of railway building in Texas, especially from 1852 to 1860, when the railway companies were hard pressed for a sufficient amount of cash with which to purchase ties, rails and rolling stock, the state had a school fund amounting to more than $2,000,000 which was lying idle in its treasury and was awaiting some form of productive investment. People generally believed that its successful use as capital by the railway companies would greatly increase the wealth and power of the state, and consequently the proposal to lend it to these companies met with favorable consideration.[4]

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[2] State Treasurer, *Annual Report*, 1908, p. 35.

[3] Sayles, *Early Laws of Texas*, 2: 378 and 419.

[4] Potts, Charles S., *Railroad Transportation in Texas*, Bulletin of the University of Texas, No. 119, 1909, pp. 89–90.

But soon after $1,816,000 had been lent in this way, the Civil War came on and handicapped the railway companies so that they were not able either to complete their roads or to make any payments of principle or interest for nearly fifteen years after the first loans were made. Indeed, the complete loss of all this loan to the railway companies seemed so inevitable that the state took charge of the property of one company and sold it at auction. Satisfactory settlements, however, were made with the other companies by the payment of interest thereafter as it became due. By 1892 the state had received $3,102,000 in principal and interest from these loans and other amounts were still due.[5] At the present time, $1,603,317 of the permanent school fund is lent on railway bonds.[6] This sum doubtless represents, approximately at least, what is left of the principal that was originally lent to railway companies, for no subsequent laws have been passed which authorized an investment in railway bonds.

A vast difference of opinion exists in Texas in regard to the advisability and success of this loan to railway companies. By some it has been condemned as a "miserable failure," incurring an enormous loss to the school fund, while by others these railway bonds are said to be the most satisfactory of all classes of either public or private securities. Governor Hogg extolled their merits in the following language:[7]

> "With the wreck of war involving the desolation of homes, waste of fortunes and repudiation of public and private obligations, there were few or no securities that survived, except these very railway bonds in which the school fund had been invested. There was less loss to the school fund from that investment than from any other security either public or private known to the authorities of the State."

In his campaign for re-election for governor in 1900 he recommended the passage of a law authorizing an investment of school funds in railway bonds.

In 1870 an act was passed which authorized the investment of $60,258.61, then in the treasury, in United States bonds and the following year a general law was passed which required the comptroller of public accounts to invest the principal of the perpetual school fund in United States bonds as fast as it was received in the treasury.[8] But in 1876 a board of school commissioners, consisting of the governor, comptroller and secretary of state, was created and directed to dispose of the United States bonds then in the treasury to the credit of the school fund and to invest the proceeds in bonds of the state of Texas.[9] This board was also directed to collect the interest due thereon from the state semiannually and place it to the credit of the available school fund. In 1885 the emergency clause of an act which authorized investments in county bonds and prescribed the manner in which they should be made recited that prior to that time there had been no statute regulating the investment of the public school and other funds, but nevertheless county bonds and other securities were being purchased with them.[10] With the exception of an act authorizing the investment of university funds in state bonds, no other legal regulation of investments was enacted until 1901.[11] At this time the board of education was authorized by general law to invest the permanent school fund in bonds of the United States, of the state of Texas or any of its counties, cities or independent school districts. A minimum rate of interest was fixed at 3 per cent and investments in any class of legalized public security other than state or United States bonds was forbidden when the indebtedness of the county, city or independent school district exceeded 7 per cent of its assessed valuation. By far the largest and most important investments, however, have been made in land notes which are merely evidences of the credit that has been extended to the settlers who purchased the land. These investments, of course, were authorized by the laws providing for the sale of reserved lands.

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[5] *Ibid.*, p. 91.

[6] State Treasurer, *Annual Report*, 1914, p. 35.

[7] Quoted by Potts, Charles S., in *Railroad Transportation in Texas*, Bulletin of the University of Texas, No. 119, 1909, p. 91.

The amount of permanent funds and the kinds of securities in which they were invested in 1908, together with the number of acres of unsold lands under lease belonging to each is shown in the following table:

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[8] Sayles, *Early Laws of Texas*, 3: 30 and 117.

[9] *Ibid.*, p. 379.

[10] *Laws of Texas*, 1885, p. 40.

[11] *Laws of Texas*, 1889, p. 81; also for 1901, p. 312.

TABLE II.—SHOWING INVESTMENT OF SCHOOL FUNDS, 1908

Form of Investment	State Permanent School Fund	University Fund	Asylum Funds
Cash on hand uninvested...	$67,956.11	$1,021.66	$34,462.37
City and Independent school district bonds	3,112,361.53	....	....
County bonds................	7,583,929.00	....	....
State bonds	2,687,200.00	604,400.00	352,400.00
Penitentiary Railroad bonds	150,000.00	....	....
Railroad bonds..............	1,603,317.00	....	....
Land notes..................	38,406,222.51	47,231.42	213,022.10
Total.................	$53,610,986.56	$652,653.08	$599,884.47
Number of acres of land under lease...............	3,957,628.30	2,072,225	....

The state of Texas has been remarkably fortunate in the investment of its permanent funds. Some other states have been more successful than Texas in obtaining the market value of their reserved lands and in building up a much larger fund in proportion to the amount of lands at their disposal, but Texas has been exceptionally free from those heavy losses due to financial disturbances, insecure investments and to irresponsible and inexperienced officials which have so frequently diminished the funds of other states to a small fraction of their original amount. In addition to the security of its investments, most of them are paying at least five per cent interest and none less than three per cent. The investments in land notes are perfectly safe, yielding a good return in interest, and as capital are assisting in the development of rural communities. The same may be said of the comparatively small amount invested in railway bonds. None of the funds is invested in United States bonds at this time, which, although authorized by law and always secure, yield but a very small income. A very small portion is invested in state bonds. This method of investment is objectionable because it is only a disguised system of taxation for the support of the schools. The money is borrowed from the school fund and spent for other purposes. It thus becomes an "irreducible state debt" for which taxes are levied to pay interest into the school fund. The investment in county, city and school district bonds is probably the best kind of investment that can be made. Mr. George Knight, who has made a special study of lands for education in the Northwest Territory, makes the following favorable comment on this class of securities:[12]

> "This plan of investment in municipal and other public bonds seems to present fewer objections than any other. The time can hardly come when good public securities can not be found and purchased. Such bonds, while often bearing low rates of interest, are almost absolutely safe and require no care or labor on the part of the state."

THE SCHOOL LAND POLICY

The general policy of Texas in reference to its school lands has been to sell them to actual settlers for a minimum price fixed by law and to invest the proceeds in interest-bearing securities of both a private and public nature. The sentiment in the state, however, has wabbled from time to time between a plan of selling at a price fixed by competitive bidding and that of a minimum price fixed by law. It has also wavered even in its attempt to maintain this minimum price at a point somewhere near the actual market value of the land. Generally speaking, the difficulties to be encountered in such an undertaking are apparent; and in Texas their full force was brought into operation so that the minimum price fixed by law, which frequently was much below the market value of the land, really became the maximum price for which the land was sold. As a result, land speculators have reaped an abundant harvest, much to the detriment of the school fund. The laws providing for the sale of the school lands have been supplemented by a system of leasing whereby the state has endeavored to secure some return to the school fund from the use of these lands, usually in large tracts for grazing purposes, until there was a real demand for them by actual settlers.

Since the leasing system originally was only a temporary device intended to supplement the income to the permanent funds derived from the sale of reserved lands, its importance has gradually diminished until, as a feature of the school land policy, it was abandoned in 1905.[13] Since that time, whenever a lease has expired or has been cancelled, the land cannot be leased again within ninety days from the termination of the former lease and then not at all if there is a demand for it by purchasers. A constant agitation was maintained against the policy of leasing reserved lands on the ground that it fostered a system of state landlordism which could not be justified in any way;[14] but the rise in land values to a point where the use of land wholly for grazing purposes is no longer profitable, and the consequent breaking up of the large cattle ranches in order to make room for the homesteader is responsible more than any other cause for the decline in the use of the leasing system and the ultimate elimination of this feature from the school land policy.

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[12] Knight, George W., *Land Grants for Education in the Northwest Territory*, Publications of the American Historical Association, 1: 185.

Twenty years ago it was estimated that the proceeds from the sale of Texas school lands would create a permanent fund of more than $100,000,000.[15] This was a reasonable expectation inasmuch as it was based upon the contemplated sale of the unsold lands classified as agricultural and grazing lands at the minimum price fixed by law. Moreover, this price was less than half the average value of Texas farm lands as reported in the United States census of 1900. If the value of the large number of timber and mineral lands which belonged to this fund had been taken into consideration, the estimate would have considerably exceeded $100,000,000. But a statement of the cash, securities and unsold land belonging to the fund at the present time shows that the state has fallen far short in realizing its expectations in this particular. If a conservative estimate of the value of the unsold lands, based upon the average price for which they have been selling during the past few years, be added to the amount of cash and securities now in the treasury, it will be seen that the school fund will never exceed $70,000,000. In fact, it will probably never reach this amount for none but the very poorest lands remain to be sold. If the present value of the unsold lands has not been overestimated, the state has secured in productive funds but little more than one-half, and at most, not more than three-fourths, of the total amount which it ought to have had according to estimate. Since the state did not receive the market value of its timber and mineral lands when it disposed of them, the deficit in the school fund is correspondingly that much greater.

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[13] *Laws of Texas*, 1905, p. 159.

[14] Brackenridge, Maj. John T., *Evils of State Landlordism*, *Texas Review*, 1: 475 (April 1886).

[15] Commissioner of the General Land Office, *Biennial Report*, 1902, p. 55.

The deficit in the permanent funds of Texas is due to the failure of the state to sell its reserved lands for their actual market value. An average price of $1.37 an acre has been received for those which were sold prior to 1908. Nearly one-half of them were sold for a minimum price of approximately $1 an acre fixed by law at a time when the average value of all the farm lands in Texas assessed for taxation was $5.56 an acre; and when North Dakota was selling its school lands out of sections 16 and 36, granted by federal government, at an average price of $14.74 an acre.[16] During the same period from 1891 to 1908, South Dakota sold 309,528 acres out of the grants of sections 16 and 36 for $5,043,036.51, an average price of $16.30 an acre.[17] The same inability of the legislature to deal with this problem as a business proposition also manifested itself in the disposition that was made of the timber and mineral lands whereby millions of dollars were lost to the permanent funds of the state. Indeed, the legislature of Texas has not won many laurels for itself while acting in a business capacity as the administrator and custodian of the school fund. Under the guise of providing homes for the homeless and of encouraging actual settlers to occupy the vacant domain it permitted the valuable agricultural, timber and mineral lands, set apart for the benefit of the school children, to slip into the hands of bonus hunters, land grabbers and speculators. If the same care and ability had been displayed in the sale of reserved lands that was afterwards exercised in the investment of the proceeds from them, it is safe to say that the permanent funds would be at least fifty per cent larger than they are at present.

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[16] Commissioner of University and School Lands, North Dakota, *Eighth Biennial Report*, 1908, p. 17.

[17] Commissioner of School and Public Lands, South Dakota, *Tenth Biennial Report*, 1908, p. 4.

The history of land grants for education in the various states is full of accounts of squandered lands, poor investments and misapplied and embezzled proceeds. Twelve states received a grant of land for school purposes from the federal government, consisting of the sixteenth section in every township. This grant was equivalent to an appropriation of from 600,000 to over 1,000,000 acres for each state. Only two states, however, have state school funds derived from any source at the present time which exceed a ratio of 5 dollars to 1 for the number of acres of land received. In the fifteen western states that received two sections in each township, which was equivalent to a grant of land varying from two to six million acres for each state, not one has a permanent school fund which shows a ratio of 5 dollars to 1 for the number of acres of land received. In fact only two exceed the ratio of 2 dollars to 1. The ratio of the permanent school fund in Texas to the number of acres of school land appropriated is 1.3 dollars to 1. If particular instances be considered, Ohio and Missouri are found to have disposed of their lands for much less than their market value and to have invested the proceeds in an irreducible state debt so that a permanent tax is levied upon the present and succeeding generations to pay interest on this debt and for the support of the public schools. In Illinois the lands were not only disposed of before there was a real market for them but what little proceeds were derived were actually used for other purposes than that for which the lands were appropriated. Michigan sold a large portion of its school lands at the rate of $8 an acre, and then permitted a revaluation of these lands so that the purchaser obtained a patent for them at a price much less than he voluntarily offered. An irresponsible state treasurer embezzled over $300,000 of the school fund in Nebraska and tried to make retribution for his misuse of this money by serving four and one-half years in the state penitentiary. Kansas sold its school lands in an early day and invested the proceeds in county bonds of "western counties that have long since been given back again to the supremacy of the prairie dog.''[18] A further enumeration of particular instances would only be a tedious reiteration of facts. It is sufficient at this point merely to add that although Texas has escaped many of the difficulties which other states have encountered in administering their funds, the inability which it has displayed to create a fund out of the means at its disposal has not been overshadowed by that of any other state in the union.

A good test to apply to the Texas school land policy is that of the average amount of school taxes paid per capita of the whole population. This is an especially suitable test in this case because one of the avowed objects in launching and maintaining such a policy was to avoid taxation. Perhaps the most satisfactory and desirable comparison that can be made is with the so-called ''land grant states'' of the federal government.

Texas has succeeded in keeping the average tax rate for each individual down to a very low figure. Whether or not this figure is as low as it should be, considering the size and the value of the land endowment, is open to question. Whether or not the Texas school system is as good as that of other states that are deriving a larger portion of their support from state and local taxation is also a matter for very serious consideration.

The Texas land endowment (52,000,000 acres) is more than seven times as large as the largest grant received by any state from the federal government (California, 6,719,324 acres). The value of the fund derived from the sale of these lands in Texas is more than eight times as large as the California fund, six times as large as the South Dakota fund, and three times as large as the Minnesota fund, the principals for each of which were derived chiefly from the proceeds of the sale of the lands granted by the federal government. But the average per capita school tax in Texas is $2.75; whereas in the states mentioned it is $7.08, $3.80 and $5.80 respectively. Nominally $2.75 per capita is a low rate of school tax, as a study of Table III will show, but even if Texas spent as much for each child of school age as the states mentioned above it would seem that the per capita tax should be much lower, especially when the size and value of the land endowment are considered.

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[18] The statements made in this paragraph are based upon Knight, George W., *Land Grants for Education in the Northwest Territory*, and Elder, F. S., *School Lands of Oklahoma*. See also Swift, F. H., *Permanent Common School Funds in the United States*, 1795–1905, pp. 272–3.

Nevertheless the Texas school system is not officially regarded as being satisfactory or successful.[19] State Superintendent Doughty has recently asserted that the school term is not more than two-thirds as long as it should be and that the schools lack the financial support necessary to equip them properly and maintain them satisfactorily. Although the returns from the school fund constitute less than one-fifth of the total revenue for school purposes they seem to prevent a satisfactory levy of taxes rather than to supplement the revenues derived from taxation. Contrary to the facts in the case, the people have seemed to believe that since they had the largest land endowment in the country, they *ipso facto* have the best supported school system. If the twenty-nine states that received land from the federal government and Texas be arranged in the order of the total expenditure from the highest to the lowest for each child of school age (5–18) (see Table III, column 1), Texas will be found to rank twenty-third on the list. While Texas spends $11.32 for each child of school age, Oklahoma spends $13.39; Kansas, $24.25; Nebraska, $26.44; South Dakota, $23.76; North Dakota, $30.56, and California $47.86. Recognizing the seriousness of the problem and the necessity for increased taxation, the state superintendent of Texas officially recommends that the state and local levies be increased and that provision be made for a county levy. If a permanent fund has the same effect in Texas that similar funds have had in other states, it will eventually become an inducement for more liberal measures of taxation and for much more ample financial support of the schools.[20]

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[19] Doughty, Supt. W. F., *Recommendations Regarding Public Education, 1914*, pp. 12–14.

[20] For a good account of the effects of permanent school funds see Swift, *op. cit.* pp. 160–203; particularly in regard to the effect on taxation, see pp. 197–8.

TABLE III.—COMPARATIVE EXPENDITURES PER CAPITA OF SCHOOL POPULATION, AGES 5 to 18, YIELD OF SCHOOL FUNDS AND PER CAPITA TAX RATE IN LAND GRANT STATES, 1912–13

Sections	Average expenditure per capita (school population 5–18 years of age) (a)	No. of acres school land granted by U. S. Gov't (b)	Permanent common school funds (c)	Total amt. revenue derived from interest on funds and rents (d)	Proportion of total revenue derived from int. on funds and rents (d)	Total amt. revenue derived from state and local taxes (d)	Av. amt. state and local taxes per capita (total population) (f)
Section 16							
Alabama ----	$5.29	902,744	$2,053,209	$165,832	4.44	$3,229,166	$1.51
Arkansas ---	7.49	886,460	1,136,134	50,281	1.30	3,701,745	2.35
Florida -----	10.10	905,503	1,491,420	47,508	2.32	1,936,913	2.57
Illinois -----	23.88	985,066	1,047,409	830,401	2.45	31,999,723	5.67
Indiana ----	24.01	650,317	8,962,096	530,809	3.33	14,213,551	5.26
Iowa --------	25.06	705,144	4,803,196	200,000	1.41	12,902,898	5.70
Louisiana ---	8.57	786,044	2,367,161	100,479	2.48	3,880,786	2.34
Michigan ---	23.47	1,067,397	5,288,313	---(e)----	-----------	------------	-----------
Missouri ----	16.91	1,199,139	3,159,281	812,650	5.65	13,569,172	4.12
Mississippi --	4.66	837,584	------------	-----------	-----------	2,665,271	1.47
Ohio --------	24.90	704,488	3,524,528	255,994	.98	25,869,689	5.42
Wisconsin --	17.91	958,649	4,182,406	215,808	1.66	10,120,446	4.33

Sections 16 and 36							
Arizona -----	$24.24	4,050,347	------------	----(e)----	------------	------------	------------
California --	47.86	6,719,324	$7,569,745	$379,009	2.14	$16,849,804	$7.08
Colorado ----	32.55	3,715,555	2,713,233	175,428	2.66	5,484,265	6.96
Idaho ------	30.96	3,068,231	2,446,278	259,949	8.93	------------	------------
Kansas -----	24.25	2,801,306	9,394,704	478,356	3.69	12,468,304	7.37
Minnesota ---	26.17	2,969,990	22,800,110	1,000,000	7.59	12,171,394	5.80
Montana ----	38.42	5,112,035	3,072,564	345,405	10.28	2,805,268	7.45
Nebraska ---	26.44	2,702,044	8,482,143	419,488	5.33	6,981,153	5.85
Nevada -----	42.02	3,985,428	2,184,702	----(e)----	------------	565,346	6.90
New Mexico--	10.76	4,309,368	50,112,154	102,478	11.06	------------	------------
North Dakota	30.56	2,306,717	8,068,982	1,461,159	27.63	3,598,816	6.23
Oklahoma ---	13.39	2,050,375	6,456,357	1,161,964	16.90	------------	------------
Oregon -----	38.00	3,329,706	6,252,549	354,366	6.05	------------	------------
South Dakota	23.76	2,063,234	10,223,349	767,005	23.33	2,222,435	3.80
Utah -------	31.62	3,003,613	1,784,510	----(e)----	------------	------------	------------
Wyoming ---	30.59	3,480,281	590,952	171,118	19.21	------------	------------
Washington -	37.49	2,488,675	8,964,667	700,000	6.67	7,464,588	6.53
TEXAS -----	11.32	52,000,000	67,749,083	2,555,257	18.06	10,747,176	2.75

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a Data taken from U. S. Commissioner of Education, *Annual Report* 1913, 2:34.
b Except Texas.
c U. S. Census Bureau, *Wealth, Debt, and Taxation*, 1913, Vol. 1, Table 1.
d U. S. Commissioner of Education, *op. cit.*, pp. 30–31.
e Included in returns for state and local taxes and therefore omitted here.
f Computed

CHAPTER VIII

THE PUBLIC LAND QUESTION IN TEXAS

THE PROBLEM OF LEGISLATION

Since land is one of the three requisites of production, the general problem in all land legislation is to secure and maintain its fair and equitable distribution among actual occupants so as to promote the general welfare of the whole community. The state in all its particular acts of legislation which either directly or indirectly affect the ownership of land tends either to approach this goal or to recede from it. The policy of the state may vary from time to time between that of encouraging large scale production on vast estates or small scale production on peasant farms; but whatever its attitude in this respect may be, the first essential of all land legislation should be to obtain definiteness and security of tenure. This quality having been obtained, the problem, whether the land be publicly or privately owned, becomes one of general policy in defining the attitude of the state with reference to its use.

As stated in preceding chapters, the state of Texas originally owned practically all the land within its borders. The most important phase of the land problem, therefore, has been the transfer of this land from public to private ownership; and since Texas had not the people within its borders to occupy and use its vacant domain, the legitimate and economic use of public land to encourage immigration was a vital subject in Texas politics for nearly half a century. Incidental and subsequent to this feature of the problem, its use as a source of public revenues and for the establishment of permanent funds has been a question of increasing importance. The manner in which these phases of the problem have been dealt with has been set forth in other chapters. A few of the general characteristics of this legislation and the social aspects of the problem now demand our attention.

Ambiguous Legislation

The ambiguity, even incongruity, of the law providing for the location of land certificates during the early settlement of Texas resulted in an unwarrantable number of conflicting claims between individual settlers. The law as it existed prior to 1850 permitted locations to be made on any lands claimed to be held by prior grants and the holder under the prior grants might be forced into court at any time to prove the validity of his title.[1] Under such a system no landowner could foresee the time when he might not be summoned into court to defend his title against some alleged defect or be stripped of his property altogether. This unsettled condition of land titles was due to poor framing of the statutes, but it was productive of an unlimited amount of litigation, and the insecurity of ownership which it involved had very noticeable effects in the shrinkage of land values. It was a subject for frequent comment in governors' messages and caused Governor Bell in 1851 to admonish the legislature in the following terms:[2]

> "There is nothing which so much retards the growth and prosperity of the country as the unsettled conditions of its land titles. This is an evil from which our state has greatly suffered; and though it has been partially removed by the adjudication of the courts, it is still a serious obstruction to her rapid advance in prosperity."

The looseness with which the statutes were framed also permitted colossal frauds to be perpetrated upon the state under the color of legal claims. By 1840 it had become so notorious, says one writer, that a large number of certificates had been fraudulently issued, some to persons not entitled to land, others to persons who were entitled, but for more land than they could legally claim.[3] Thousands of acres were thus claimed under what was known as "eleven league claims," "border league claims," and "grants of premium lands," for all of which the state was forced into court in order to protect itself. Land certificates became an article of traffic by virtue of a provision in the law which made them assignable; but in consequence of the large number of fraudulent certificates in circulation which could not be distinguished from the genuine, their value was greatly depreciated. To limit this evil an act "to detect fraudulent certificates and to provide for issuing patents to regular claimants" was passed in 1840.[4] This act created what were popularly known as traveling boards of land commissioners which were required to visit each county in the district assigned, inspect the records of the county boards, and ascertain by satisfactory evidence what certificates for land should be issued to legal claimants. After this, the patents were issued only on such certificates as had received the endorsement of these boards. The constitutionality of this act was attacked, but the act was sustained by the Supreme Court on the ground that certificates for land were imperfect obligations of the government which could not be enforced without its assent; and that the government, while it retained a share in the land, could establish, alter and modify the laws relating thereto from time to time as it deemed necessary in maturing an imperfect title into a perfect one.[5] In addition to this, the state was involved in a whole series of acts to ascertain fraudulent entries, trespass to try titles and to quiet land titles in certain colonies.

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[1] Bell, Governor P. H., *Annual Message*, November 10, 1851.

[2] *Ibid.*

[3] Sayles, *Real Estate Laws of Texas*, 1: 239.

The controversy which developed between the state and the railway companies over the interpretation of the railway grants is a good illustration of the difficulties which grew out of the lack of care in framing the statutes. In the lawsuits which followed, the state recovered nearly 1,500,000 acres from these companies. Most of the certificates for this land were not located with fraudulent intent, but the controversy arose because of a legitimate difference of opinion in regard to the meaning of the statute. The law of 1854 provided that sixteen sections of land should be donated for each mile of road, but that this land should not be granted "to any company for more than a single track road, with the necessary turn-outs." This sentence was the joker, and the amount of judicial verbiage required to interpret it fills a remarkable number of pages of the Texas court reports. The first case came up in 1891.[6] The railway companies contended that sidetracks were "necessary turn-outs" and, therefore, they should be counted in computing the total mileage of the road as a basis for earnings of land. Moreover, it was asserted that the previous interpretation of the statutes had acknowledged such a computation. The court, however, decided that sidings, turn-outs, and switches were necessary parts of a well equipped railway, and held that the right to lands extended only to the number of miles of extension of completed road upon the line and not to side tracks.

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[4] Sayles, *Early Laws of Texas*, 1: 385.

[5] For statement of this principle and citations to cases in which it was developed see Sayles, *Real Estate Laws of Texas*, 1: 239.

Two notable lawsuits arose out of an effort to determine just how much of the public domain was actually appropriated to the school fund by the legislation that was enacted for that purpose. These cases are particularly significant here because they involve a direct gain or loss to the school fund of more than 16,000,000 acres of land and placed the validity of claims to land under the homestead law in jeopardy. But they are worthy of special emphasis because they set forth in concrete and unmistakable outline the absolutely certain consequences that follow legislative enactments which have not been carefully studied and constructed before they pass the legislature.

The Constitution stated that (Art. 7, Section 2)

> "All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the state out of grants heretofore made *or that may hereafter be made* to railroads or other corporations of any nature whatsoever; *one-half of the public domain of the state*[7] and all sums of money that may come to the state from the sale of any portion of the same, shall constitute a perpetual school fund."[8]

Twelve years later two questions were fully developed in regard to the meaning of this appropriation.

First. Did the Constitution appropriate to the school fund an undivided one-half of the public domain as it existed in 1876 and such other alternate sections as might be included in grants that might be made to railway or other corporations from the remaining half? There were 67,961,277 acres in the vacant public domain at that time after 3,000,000 acres had been deducted for the capitol building and 1,000,000 acres for the university. It was said that 33,980,633 acres, one-half of the total amount, were appropriated to the school fund by the self-operating force of the constitution. Then if the foregoing question was answered in the affirmative, it was not contended that any more land would accrue to this fund unless grants of land were made to railway or other corporations. If so, then such grants were required to be made out of the one-half that remained after the foregoing appropriation was made and the school fund was entitled to each alternate section in such grant. If all the remainder of the vacant public domain were granted to corporations, then the school fund would conceivably be entitled to three-fourths of the public domain as it existed in 1876. This is the contention that was made by the Attorney-General, but the majority of the Court took the opposite view which will be stated in the succeeding paragraph.[9] Chief Justice Stayton, however, submitted a very strong dissenting opinion which supported this view of the contention and which has many features that commend themselves more favorably to the reader for soundness of reason and clearness of thought and expression than the prevailing opinion.

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[6] *Galveston, etc., Ry. Co. v. State*, 81 Texas, 572, 1891, 17 S. W. 67.

[7] The italics do not appear in the original text.

[8] Revised Statutes, 1911, p. xiii.

Second. Did the constitution appropriate only one-half of the vacant public domain as it existed in 1876 to the school fund regardless of what might be done with the remaining half? There was no question but that 33,980,633 acres had been appropriated to that fund. The question was whether or not the alternate sections of grants that had been made to railroads since 1876 should be counted in making up this quantum of land. The contention of the state through the Attorney-General was that they should not be so counted but that they should have been added to the 33,980,633 acres to make up the total quantum to which the school fund was entitled. But the majority of the Supreme Court overruled his contention and answered the question in the affirmative. It was held that the people in framing the constitution did not intend to appropriate an undivided one-half of the vacant public domain to the school fund and in addition thereto the alternate sections of land granted to corporations. Such an appropriation would have stopped all locations on public land until after the school land had been segregated from the mass of public domain. There would have been no spot in the state unappropriated upon which to make locations. Until the school land had been segregated and clearly designated as such, no one could tell whether or not a particular piece of land desired was subject to location and occupation as private property under the homestead and other laws providing for such occupation. It was said that the object of the constitutional appropriation for the school fund was to prevent the legislature from disposing of more than one-half of the public domain for other purposes. It was the duty of the legislature to divide the public domain and dispose of it after all previously acquired rights had been satisfied, but that in such partition and disposition the constitutional provision would force the legislature to recognize the claim of the school fund to one-half of that amount.

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[9] *Galveston, Harrisburg & San Antonio Ry. Co. v. State*, 77 Texas, 367, 1890.

In the case of *Hogue v. Baker*,[10] the court consistently followed its holding in the former decision. This time, however, the decision was favorable to the contention of the state. An effort had been made through mandamus proceedings to force Baker, the land commissioner, to patent a piece of land claimed as a homestead entry. The commissioner claimed that one-half of the vacant public domain, as it existed in 1876, belonged to the school fund. This was in accord with the previous judicial interpretation of the Constitution by the Supreme Court. He also showed that more land had already been acquired by private owners since that time than had been allotted to the school fund. He contended, therefore, that no vacant public domain was left which was available for homestead entry. The Supreme Court sustained his contention and held that since more had been acquired by private owners than had been allotted to the school fund, the remainder equitably belonged to that fund.

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[10] 92 *Texas*, 58, 1898.

THE ADMINISTRATIVE SYSTEM

The problem of administering the Texas land system has consisted chiefly in that of keeping an account of grants and claims for land, of making the proper surveys, of issuing patents to legal claimants, of keeping an accurate record of the surveys that have been made and patents that have been issued and of guarding the state against fraud and misrepresentation in the disposition of its public lands. All of this work has been conducted under the direction of the commissioner of the general land office. In addition to these general duties, the school land department has been created as one of the separate divisions of the land office so that the land commissioner has been charged with the general supervision of the sale and lease of reserved lands. Although these duties are largely technical and ministerial in character, yet the office has always been of sufficient importance and the salary sufficiently remunerative to command the attention of some of the best men of the state, and not infrequently the reports and counsel of the land commissioners have been of immeasurable assistance to the legislature. In fact if the legislature had been careful to follow the recommendations of the land commissioners more frequently than it did, the state, without doubt, would have realiezd more, both in financial returns and in general social welfare, from its public lands than it did or than is now possible.

The Constitution of the Republic of Texas provided that a general land office should be established by law for the purpose of simplifying the land system and of protecting the people and the government from litigation and fraud.[11] All titles to land within the republic were required to be registered in this office. Accordingly a land office was nominally established at Austin by an act of Congress in December, 1836; but owing to the unsettled condition of the country at that time, the actual opening and operation was suspended from time to time by subsequent acts of Congress and executive orders, so that the office was not really opened for the issuance of new titles until 1844, eight years after it had been nominally established. The constitution of the state required that a general land office should be maintained at the seat of government, and similar provisions have been placed in all subsequent constitutions. The organization of the land office consists of a commissioner, his deputy, a receiver who takes charge of all money due the office, and such other expert and clerical help as is necessary. All of the books, records, and papers pertaining to lands are required to be recorded in this office. In general, the principle and organization is the same as that of the general land office of the United States.

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[11] Sayles, *Early Laws of Texas*, 1: 208.

The constitution of the Republic also directed that the whole territory of the Republic should be sectionized in order to enable the officers of the government or any of its citizens, to estimate with certainty what lands were vacant and what ones were covered with a valid title.[12] The establishment of a general system of surveying was left for subsequent acts of congress. The following year a law was passed which directed that one base-line and four meridian lines should be run in such manner as the commissioner of the land office should direct and that subsequent surveys should be made from these lines.[13] The probable intention of the constitution and of the subsequent acts of congress of the Republic of Texas was that the territory should be sectionized according to the rectangular system used in the United States. But in reality this system has not been followed except in the surveys made by railway companies and by the government on its reserved lands.[14] The Republic of Texas was also divided into twelve land districts; but, generally speaking, since Texas became a state, each organized county has constituted a land district and has had its own surveyor who is required to make the maps and plats of his county and report them to the general land office. There is no general supervision over the surveying by a state officer other than the land commissioner.

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[12] *Ibid.*

[13] *Ibid.*, p. 244.

[14] Sayles, *Real Estate Laws of Texas*, 1: 449.

SOCIAL ASPECTS OF THE LAND QUESTION

The question of the number and size of farms that will exist in a given area is primarily a problem which will be determined by the economic forces of the community, the adjustment being made to suit the climate and topography of the country and the nature and fertility of its soil. Improvements in farm implements will also have a bearing on the problem since they will largely determine the scale upon which agricultural operations may be conducted. But the natural forces which affect its solution may be modified by legislation, especially insofar as this legislation attempts to influence and regulate ownership of the land; and to this extent the question of the number and size of the farms in Texas is one for consideration here. The policy of all Texas land legislation has been ostensibly to encourage private ownership of land in small quantities by actual occupants. The impression now prevails very generally, however, that the legislative system has permitted the acquisition of a vast number of individual holdings, not necessarily in contiguous tracts, which in the aggregate far exceeds the quantity which the legislature ever intended that an individual should possess. This impression cannot, in the absence of adequate census enumeration, be statistically demonstrated or dispelled. Nevertheless recent census reports do show that out of 417,770 farms only 167,515, considerably less than half, are operated exclusively by owners; also that while the total number of farm operators increased from 228,126 in 1890 to 417,770 in 1910, an increase of 83.1 per cent, the number of tenants increased from 95,510 to 219,575, or 129.9 per cent.[15] During the same period the average size of farms in Texas increased from 225.3 acres in 1890 to 357.2 acres in 1900 but fell back to 269.1 acres in 1910.[16] This situation seems to the writer clearly to bear out the conclusion that "the government cannot give away valuable lands or sell them at prices far below their real value without subsidizing the speculator, endowing monopoly, and pauperizing the people. The poorer classes derive no real benefit from this indiscriminate charity.''[17] In spite of the state's well intended assistance to the worthy pioneer, shrewd, far-seeing and competent private owners are now reaping the harvest of its benevolent generosity at the expense of the less shrewd and less competent actual occupants of the soil.

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[15] Thirteenth Census, *Reports Texas Supplement*, p. 8.

[16] See Table VI pertaining to land ownership in Texas, p. 149.

As stated in the introduction to this monograph, the general tendency of land legislation, both in European countries and in the United States, has been to encourage individual holdings of land. An illustration of the actual tendencies in this direction is found in Germany where the total number of farmers who own land has increased from 5,558,317 in 1895 to 5,736,082 in 1907, a net gain of 177,765 in twelve years.[18] This gain is made by a large increase in the number of farmers on holdings containing twenty hectares (49.42 acres) or less and a corresponding decrease on those containing more than twenty hectares.

The tendency, though not so marked, has been in the same direction in England where there has been a net gain of 140,534 farms, containing one acre or more, since 1871.[19] Agricultural statistics show that there has also been a marked increase in the number of real farms in the United States since 1850 and that the largest additions have been in groups of those containing fifty acres and over. The census officials reported in 1900 that this growth indicates "a movement toward agricultural individualism as distinct as the opposite tendency in cities toward wage service and dependence upon employers.''[20] While this tendency continued throughout the decade 1900–1910, it is very significant that the number and acreage of farms increased much less rapidly than the total population.[21]

During this period, however, the number of farms containing 1,000 acres and over has increased in the United States from

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[17] Ely, Richard T., *op. cit.*, p. 593.

[18] *Statistisches Jahrbuch fur das Deutsche Reich*, 1909, pp. 55–56.

[19] Board of Agriculture and Fisheries, *Agricultural Statistics*, 1908, vol. 43, part 1, p. 72; also a table showing number and size of agricultural holdings in England in 1871, reprinted from a report of the Committee of the House of Lords in 1873 in Taylor, C. F., *The Land Question from Various Points of View*, p. 46. I have not been able to verify this table but owing to its importance, I feel that it is approximately correct and too authentic to be omitted.

[20] United States Census *Reports*, 1900, 5: xliv.

[21] Thirteenth Census *Abstract*, p. 266.

3,720 in 1870 to 50,135 in 1910. Moreover, in 1870 there was only one farm containing 1,000 acres or over for every 724 other farms of smaller size, whereas in 1910 there was one farm containing 1,000 acres or over for every 126 other farms of smaller size. The evidence relating to this subject shows conclusively, therefore, that the tendency in the United States toward the ownership of land in large quantities has been rapidly increasing proportionately during the past four decades. In this connection, however, it should be noted that the increase in the number of such farms in the New England, West North Central, Mountain and Pacific states for the decade 1900–10 more than offset the comparatively slight decrease in the other groups of states to the extent of 2,795 farms, which was the net increase in the number of this type of holdings. The details of this situation are shown in the following table:

TABLE IV—SHOWING THE INCREASE AND DECREASE IN THE NUMBER OF 1000-ACRE FARMS BY GROUPS OF STATES, 1900–1910

Groups showing a decrease:	
Middle Atlantic	90
East North Central	188
South Atlantic	866
East South Central	412
West South Central	743
Total decrease	2,299
Groups showing an increase:	
New England	81
West North Central	2,266
Mountain	1,780
Pacific	1,147
Total increase	5,274
NET INCREASE	2,975

This tendency is not so pronounced in the United States as in Texas where the total number of farms in this group has risen from 72 in 1870 to 11,123 in 1910 and where approximately one-fourth of the total number of farms in the United States containing 1,000 acres or over are situated. A study of the following table which sets forth the distribution of large farms among states containing more than 1,000 farms of this class, shows that there are 6,430 more farms containing 1,000 acres and over in Texas than in any other state in the Union. The net gain in the number of farms in this class for the decade 1890 to 1900 was 5,805, but the total number of such farms declined 97 in the succeeding decade. Probably most of these large farms were formerly held as cattle ranches but recent census reports state that during the past ten years much of this land has been purchased by speculators for sale in smaller farms and that at the time of the enumeration most of it was in the hands of these speculators or of purchasers who had not yet occupied it.[22]

TABLE V—DISTRIBUTION OF LARGE FARMS IN UNITED STATES, 1910

States having 1,000 or more farms containing not less than 1,000 acres each	Land area in square miles	Number of farms containing 500 acres but less than 1,000	Number of farms containing 1,000 acres and over
United States	**2,973,890**	**125.295**	**50,135**
California	155,652	5.119	4,693
Colorado	103,658	2,426	1,577
Georgia	58,725	3,950	1,521
Kansas;	81,774	10,475	3,360
Louisiana.	45,409	1,548	1,018
Montana	146,201	2,353	1,909
Nebraska	76,808	13,128	3,867
North Dakota	70,183	12,662	2,416
Oregon	95,607	2,716	1,716
South Dakota	76,868	12,662	2,416
Texas	262,398	12,833	11,123
Washington	69,121	3,481	1,726
Wyoming	97,594	984	1,155

Unquestionably the cattle business has favored private acquisition of many, if not most, of these large tracts of land in Texas. Nevertheless a far-sighted land policy would have opened the land to the cattleman without prejudicing the interests of the bona fide settler when the state decided that the land should be opened for further agricultural development. To the extent that these large farms are now held by speculators rather than either cattlemen or operating farmers, the land system may be said to have fallen short of accomplishing its purpose.

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[22] *Ibid.*, Texas Supplement, p. 6.

A question of greater importance at the present time than speculative ownership is the problem of tenancy. In 1910 Texas had a population of 3,896,542 of which 75.9 per cent were living in country districts or in towns of less than 2,500 inhabitants. Furthermore, the census returns for 1900 show that there were 341,524 families living on farms as compared with 240,531 living in other homes; but of all those living on farms, only 163,912 families—less than one-half—were living on farms which they owned. All the remainder of the farming population were tenants. Carrying this analysis still further, it is found that only 125,504, or thirty-six per cent of the farming population, were living on unencumbered farms. The federal census returns for 1910 do not show the distribution of the population between urban and rural communities in terms of families, but in view of the fact that the percentage of farms operated by tenants has increased from 49.7 to 52.6 during the past decade, it is apparent that tenancy as a factor in the problem of rural betterment in Texas is not declining in importance.

A comparison of the subject of farm homes in Texas with that of other states presents the Texas situation in a very unfavorable light. There are only seven other states in the Union in which the number of tenant farmers exceeds the number of farmers who own their land. These are Alabama, Arkansas, Georgia, South Carolina, Louisiana, Mississippi, and Oklahoma. In California, a state whose land system originated in Spanish and Mexican laws just as did that of Texas, but which system subsequently became merged into that of the United States, 79.4 per cent of the farmers are land owners, while only 20.6 per cent are tenants. Furthermore, in thirty-three states the number of farmers cultivating land which belongs to them exceeds 65 per cent of the farming population, while in Ohio the figures for this group stand at 71.6 per cent; Indiana, 70 per cent; Minnesota, 79 per cent; Michigan, 84 per cent, and Wisconsin 86.1 per cent. Moreover, if all the states bordering on the Atlantic Coast and on the Gulf of Mexico be excluded from this comparison, there still remain only four states in the Union in which the number of farmers who own their land is less than 60 per cent of the total number of farmers. It appears, therefore, that in the great majority of states in which agriculture is a principal industry, the number of tenant farmers is less than two-fifths of the farming population, whereas in Texas it is more than one-half. During the four decades, 1880–1910, the number of tenants in Texas increased from 65,468 to 219,575, a proportionate growth of 335 per cent. In 1880, tenants constituted 37.6 per cent of the total number of farm operators; whereas in 1910 they composed 52.6 of all such operators. Moreover, a recent study of tenancy in thirty-seven cotton growing counties shows that the average number of tenants in these counties exceeds 59 per cent of all farm operators,[23] and that "the great agricultural and industrial problems of present day Texas are to be found in a section of the state which was organized five or ten years after Texas entered the Union." These 37 counties include all the greatest cotton growing counties in the state. Since the avowed purpose of Texas land legislation has been to transfer as quickly as possible the title of the public domain from the state to persons who would reside upon and use it, and since in so doing actual residence and improvement have been a condition precedent to title, these figures present an anomalous situation. The predominating class of farmers in a country which has boasted of its free land and in which the government has literally given away the land to encourage immigration and settlement of its public domain are tenants.

Many causes, social, economic, personal, may be assigned for the rapidly increasing number of tenants in Texas. A careful analysis and lucid presentation of some of these causes has recently been made.[24] From the historical point of view, however, the writer believes that the influence of legislation in the disposition of public land should not be overlooked. It must be remembered that many, many tracts of land containing as much as 1280 acres were granted to individuals in the early days of Texas history. Even the more moderate donations to homesteaders rarely contained less than 160 acres and frequently as many as 320 and 640 acres. The ease with which many of these tracts could be acquired and disposed of to an assignee was an inducement to the speculator, and consequently there probably are many farms in Texas today that are owned by one man and cultivated by another because of the unusual liberality of the land laws.

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[23] *Studies in Farm Tenancy in Texas*, Bulletin of the University of Texas, No. 21, April 1915, p. 15.

[24] *Studies in Farm Tenancy in Texas*, *op. cit.* 1915; also *Studies in the Land Problem of Texas*, Bulletin of the University of Texas, No. 39, 1915.

The necessities of a grain-growing and live stock-raising agriculture in the pioneer days of Texas, however, required the donation and acquisition of tracts containing large areas. Conditions have so changed in modern agriculture as it is practiced in Texas that the economic farm unit is now smaller than it was prior to 1870. Students of the cotton industry have shown that cotton growing got its first real hold in Texas during the decade 1870–80. The average modern cotton grower rarely uses more than 50 to 80 acres, while the wheat and corn grower is cultivating 160 to 200 or possibly 240 acres.[25] Hence the legal unit in which the land was originally granted was larger than the economic unit that is now being cultivated by the farmer.

Consequently there are two classes of landowners in Texas who are leasing all or part of their land to tenants; one composed of those who acquired their land for speculative purposes because it was easy to get, and the other composed of farmers who possess tracts that are larger than they can profitably operate. Many of the former class never seriously contemplated operating their land themselves. Tenancy is inevitable wherever very much speculation is indulged. In the face of the rising land values of the past fifty years, it is too much to expect that many of the latter class of owners, or their heirs or assignees, would separate their holdings into parcels suitable for modern agriculture and sell them to non-owning operators. The leasing system is a natural development in such circumstances.

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[25] See *Studies in the Land Problem of Texas, op. cit.* pp. 40–41.

The extent to which this situation prevails cannot be statistically demonstrated. An indication, however, that this analysis is correct is found in the fact that in 1900 there were 174,991 rented farms in Texas, 166,088 of which were held by owners who resided within the state; and that there were 100,310 resident as compared with only 1756 nonresident owners of these farms.[26] The federal census for 1910 showed 6531 farms operated by tenants in Brown, Fort Bend, Medina and Robertson counties. In 1914, 850 of these farms, only 13.3 per cent, were found to be owned by men who resided outside of the county in which the farms were located.[27] It seems to be further indicated by the fact that 50.5 per cent of the farms now fall within the groups ranging in size from 20 to 99 acres and that 73.1 per cent fall within the three groups ranging in size from 20 to 174 acres.[28] Thus it will be seen that nearly three-fourths of the farms actually being operated are not larger than the smallest unit commonly granted by the state in its transfer of the public domain to private owners.

Is tenancy a step toward ownership? The report of the Twelfth Census (1900) contains the following interesting comment:

> "Outside of the Southern divisions, a relatively small amount of farm property was concentrated in the hands of a few individuals. The names of owners, when taken in connection with those of the tenants, suggested in a large number of cases, relationship between the owner and the tenant, as that of father and son. Tenancy of this character marks the first step toward transfer of ownership. The owner, once an active farmer, reaching advanced years and wishing to cease the intense labor of earlier life, surrenders the care of his farm to his son or to another individual, who cares for the farm as tenant for a few years and later becomes the owner."[29]

Ten years later Professor Hibbard, who assisted in the preparation of the Thirteenth Census reports pertaining to agriculture, pointed out the fact that the highest proportion of tenancy is found in connection with the land highest in price within the states in which general agriculture predominates;[30] also that

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[26] Twelfth Census *Reports*, vol. 5, p. 309.

[27] Thirteenth Census, *Texas Supplement*, Tables 1 and 2: *Studies in Farm Tenancy*, *op. cit.* pp. 33–35.

[28] Thirteenth Census, *Texas Supplement*, p. 9.

[29] Vol. V, p. lxxxix.

> "the system of farming is a factor equally important, if not more important, than the price of land in turning the scale in favor of ownership or tenancy. Those who engage in what is called the mining type of farming are losing their hold on the soil. Those engaged in a more profitable type are retaining it to a much greater degree. Whatever forces raise the value of land make greater demands on the farmer who aspires to ownership. Whatever increases the efficiency of the farmer makes ownership more probable."[31]

It is very hard for one who studies the facts of tenancy as it exists in the United States to feel that tenants as a class are progressing happily on the road to ownership. Apparently the larger part of them are of the inefficient type of farmer who lacks the organizing ability and business acumen so essential to success in modern profit-seeking agriculture. They are also afflicted with "absolute" rather than "relative" poverty to the extent that they are unable individually to improve their condition. If Professor Hibbard's analysis is correct, and the writer believes that it is, the only way of escape from the tenant's present conditions appears to lie in such organized associative effort among the farmers and legislative cooperation in the community as will enable the individual farmer to become a better producer and a more successful business man.

The foregoing observations regarding the relationship between land ownership and tenancy in the United States are especially applicable to the situation in Texas. The following table shows the changes in the number of farms, average size of farms, average value of land and buildings per farm, and tenancy from 1850 to 1910:

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[30] Hibbard, B. H., *Tenancy in the United States*, in *The Annals* 40: 29 (1912).

[31] Hibbard, B. H., *Tenancy in North Central States*, in *Quarterly Journal of Economics* XXV.

TABLE VI.—LAND OWNERSHIP IN TEXAS[22]

Year	Number of farms	Average acreage per farm	Average value of land and buildings per farm	Average value of land and buildings per acre	Per cent of farms operated by tenants
1850......	12,198	942.5	$1,357	$1.44	....
1860......	42,891	590.9	2,054	3.48	....
1870......	61,125	301.0	787	2.62	....
1880......	174,184	208.4	979	4.70	37.6
1890......	228,126	225.3	1,753	7.78	41.9
1900......	352,190	357.2	1,964	5.50	49.7
1910......	417,170	269.1	4,412	16.39	52.6

Particular attention is called to the fact that the value of land and buildings per acre has trebled during the past decade; to this extent has the difficulty of passing from tenancy to ownership been increased on account of the value of land.

What now of the poverty of the tenant? Studies pertaining to the property owned by tenants indicate that the average renter possesses not more than $350 worth of personal property whereas $758 worth of domestic animals and implements is regarded as essential to the successful operation of an average farm.[23] In 1913 it appeared that only 30 per cent of the 2,803 nonlandowning country dwellers in Travis and Ellis counties possessed from $400 to $790 worth of property and were thus able at best to furnish a one-team farm. Inability to accumulate enough personal property in the form of domestic animals, implements and household goods to equip a one-team farm at a time when the average value of a 69-acre farm is $6,000 makes poverty a very formidable barrier to progress toward landownership for the majority of tenants in Texas. Further than this, the coincidence of the one-crop cotton-growing industry of the state with the farms occupied by tenants testifies abundantly to the inefficiency of the agricultural methods practiced in this great state.

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[22] Adapted from the Thirteenth Census. Texas Supplement, pp. 6–9.

[23] See Appendix III, n.

High priced land for the landowners and poverty and inefficiency for the landless make the step from tenancy to ownership all too long for most farmers. Considered in the light of the history of Texas public land legislation, they also indicate clearly that benevolent donations of public property generously bestowed upon the worthy poor in one generation will not relieve the succeeding generation from want and necessity. Social responsibility for the economic status of the individual is not discharged by public charity. Long will Texas, just as many other states, be obliged to wrestle with mistakes growing out of the unwise legislation of former generations. May the great state of the future learn from the past to help the landless and the homeless to help themselves rather than bountifully endow them out of a public treasury temporarily replenished from the proceeds of public credit!

Ownership of land in Texas by corporations and aliens is prohibited. Prior to 1893 no legal restrictions had been placed upon such acquisition or ownership, except such as were contained in the law providing for the sale of reserved lands. By far the largest corporate owners of land were the railway companies; and on account of the fact that their lands were rapidly increasing in value and were being used to an excellent advantage as a basis of credit on loans obtained in the financial centers of Europe where land security was regarded as the very best, these companies were refusing to alienate their lands as required by law. Schemes were also devised whereby land was transferred to a land company, consisting chiefly of the officers of the railway corporations, which managed and disposed of it for the benefit of the railway company or its creditors.[34] The spirit of the law was thus evaded. In the western part of the state land was also being acquired and held in large tracts by the big cattle companies, and this was placing a great obstacle in the way of the homesteader. Consequently, a law was passed in 1893 which declared "that the unrestricted ownership of lands in this state by private corporations is a perpetuity and is hereby prohibited.''[35] All corporations owning land at that time were required to dispose of their holdings within fifteen years. At the close of the session of the legislature which passed this measure Governor J. S. Hogg delivered a congratulatory address in which he classed this act as one of the three great measures passed at the session and declared that the people of Texas might now hope to see the corporate land monopoly pass the dominions of the state.[36] Similar provisions were enacted at the same time in regard to the ownership of land by aliens.

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[34] Potts, Charles S., *Railroad Transportation in Texas*, Bulletin of the University of Texas, No. 119, p. 104.

CONCLUSION

In accordance with the various legal methods which have been described in the foregoing pages, the state of Texas has disposed of practically all of its public lands. None whatever remain to be acquired under homestead laws. Approximately 2,000,000 acres of public school land and a little over 2,000,000 acres of university land are all that are left in the control of the state out of a vast domain comprising more than 170,926,080 acres. Unless serious and unexpected changes are made in the plan now being used for the sale, these reserved lands will soon be disposed of and the state will have become the recipient and custodian of the proceeds of their transfer to private owners. The public land question, therefore, has practically ceased to be a vital issue in Texas politics. Other questions of equal concern, however, which are a direct outgrowth of the disposition of the public lands have required and are now receiving most earnest consideration throughout the whole state, and they will continue to demand the best thought of its citizens and the most unselfish and devoted efforts of its statesmen for years to come. The importance and significance of these questions are greatly enhanced on account of the mistakes and failures that were made in the land legislation of former years.

With the passing of the public land question in Texas, doubtless no one, even the most optimistic, will say that the state has made the best possible use of this vast domain. Sections sixteen and thirty-six having been reserved for school purposes as in other states, the question of whether or not the state would have profited more in a financial way and have obtained better social and industrial conditions by ceding its lands to the federal government at the time of annexation, to be disposed of according to the land laws of the United States, is one which does not lend itself to definite proof. The occupation and improvement of the vacant land, the advancement in agriculture, and the growth in some industrial lines seem to have been more rapid and phenomenal in Texas on account of the assistance rendered by its land system than they otherwise would have been. On the other hand, the state seems to have been imposed upon by promoters, stock jobbers and land grabbers to just as great an extent in comparison with the magnitude of the interests involved as the federal government. Speculation in land has been just as flagrant and the tendency of farms to increase in size and to be owned by others than actual occupants is much more noticeable for reasons previously set forth. In view of these facts, a state government, particularly that of Texas, can hardly be said to be more successful than the national government in disposing of public lands, and insofar as the land system of Texas has not been able to avoid the mistakes of other systems and to foster and maintain a widespread condition of ownership by the operating farmer, the state is confronted with social and industrial problems just as serious as those of some of its neighboring states. This is particularly true in regard to the development of the mineral lands, the proper use of the standing timber, the reforestation of cutover lands, the protection of the agricultural population against the acquiring and holding of farm land by nonresident owners and the organization and regulation of industrial and commercial corporations.

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[35] *Laws of Texas*, 1893, p. 36.

[36] Wooten, Dudley G., *Comprehensive History of Texas*, 2: 311.

Public attention has already been directed toward the solution of the railway problem and considerable success has been attained, but this problem is still an important issue. At the time when such liberal aid was being rendered to these corporations they seem to have obtained control of the state and were exercising this control much to the detriment of the public. At the time when the decision in the case of *Davis v. Gray* was rendered they were in the zenith of their power, and it is said that "this [decision] made the chartered companies of persons the head and controllers of a little government of their own within the terms of the charter and independently of the state in which the charter was granted; and since that time, incorporated companies have been emboldened to assert and to act upon this judicially adjudged independence." Since then the pendulum has swung to the other end of the arc and these companies have been forced to recognize the supremacy of law. More than 10,000,000 acres which had been patented to them have been recovered; the issuance of their stocks and bonds has been regulated; their rates have been fixed and their service determined by the railroad commission; their political power has been greatly diminished by the prohibition of lobbying and the abolition of free passes; and, in general, they have been "reduced from the position of masters to that of the servants of the people." As a result, it is said that

> "the state can now afford to adopt a policy sufficiently liberal to allow the companies to make the many extensions and betterments which all agree are necessary to provide the community with adequate railway facilities. Such a plan would seem to be in line with good public policy, aside from many questions of fairness to the owners of railway property."[57]

One of the most important problems at the present time is the attitude which the state assumes and will take in the future toward the corporate form of industrial activity. The abundance and variety of raw material within the state seems especially to favor the development of manufacturing industries, and the establishment of those which will make use of the standing timber is regarded as particularly necessary and desirable. But progress along this line has been greatly retarded by the scarcity of capital in the southwest. Owing to their experience with the railway and other internal improvement companies, the people of the state seem to have become suspicious of all forms of corporate activity and have imposed political conditions and restrictions upon such undertakings which increase rather than diminish the need for outside capital. Instead of being a fertile field for investments, as one would naturally suppose, Texas seems to be the opposite. The large insurance companies with all their excellent facilities for supplying the much needed capital have withdrawn from the state, and valuable agency organizations have been broken up on account of the law regulating the investment of reserves supposedly to secure greater safety for the policy holder, but primarily to create a market for Texas securities and to obtain a revenue for certain counties.[38] A committee representing the Merchants' Association of New York, in response to an invitation from the governor and the legislature of Texas, visited the state in 1901 with a view of ascertaining its opportunities for the development of new business. The committee published an elaborate report in which the natural resources and economic conditions of the state were carefully and explicitly described. But the report also contains the following statement:[39]

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[57] Potts, Charles S., *Railroad Transportation in Texas*, Bulletin of the University of Texas, No. 119, p. 200.

> "Whether true or false, the belief is widely current that public sentiment in Texas deems the corporate form of capital harmful to the public welfare, and, therefore, worthy of severe restrictions and penalties with which other forms of capital are not burdened. Moreover, the corporate capital from without the state is supposed to be regarded by that public sentiment, not as an instrument for multiplying the riches of that state, but on the contrary, for abstracting them and taking them away and, therefore, to be impeded as much as possible by severe and discriminative taxation. Beyond question, this belief, whether prejudicial or well founded, has deterred investment in Texas and materially impaired its development by leaving it dependent upon its insufficient home capital."

If such growth and advancement in industrial enterprises as seems desirable is to take place, judicious legislation must be enacted which will permit and wisely regulate the use of outside capital within the state.

The relationship between landlord and tenant has now become one of the most acute economic problems in Texas politics and much more acute in Texas than in any other state in the Union. Tenants have organized themselves in an association bearing the name of the Renters' Union of America. Measures ranging all the way from the fixation of a "fair rent" by public authority to a tax "to the limit on all land held for speculation and exploitation" are being strenuously advocated. The old time idea of "use and occupancy" as the only just basis for title to land, long ago advocated by the Knights of Labor, has been revived and declared to be the only wise and reasonable method of improving the miserable and wretched condition of tenants. To this extent did the fathers fail to achieve their cherished ideals of permanently providing lands for the landless and homes for the homeless by generously bestowing their heritage upon many worthy but unappreciative recipients. The legislation which will assist in the provision of homes and small farms "for our good people" is a problem exactly similar in character and of no less importance or significance than the disposition of the public domain. In meeting and solving this problem Texas citizenship will manifest its genius and capacity for social advancement through political organization and will contribute generously and bountifully to the knowledge and experience necessary for the social well-being of the state and nation.

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[38] Zartman, Lester W., *Mistakes in State Regulation of the Insurance Business*, *Yale Review*, 17: 28 (May 1908).

[39] Merchants' Association of New York, *Report*, 1901, p. 81.

APPENDIX I

THE COST OF THE PUBLIC DOMAIN

"Washington, D. C.
September 26, 1913.

Mr. Reuben McKitrick,
Cedar Falls, Iowa.

My dear Sir:

Complying with your request of September 9, 1913, I inclose herewith a statement showing approximately the cost and expenses of the public domain to June 30, 1913. The amounts of some of the expenses incurred are not available and some of the figures herein stated are estimated. This statement shows excess of receipts over expenses to be $68,596,877.67.

The war and exploration expenses are not taken into consideration in the figures stated, and if they were included they would probably show a greater deficit than the $150,000,000 given by Dr. Shaw.

Very respectfully,
(Signed) C. M. Bruce,
Acting Commissioner."

STATEMENT SHOWING COST OF AND RECEIPTS FROM THE PUBLIC DOMAIN FROM THE GEORGIA CESSION 1802 TO JUNE 30, 1913.

	Receipts	Expenses
Purchases and cessions exclusive of expenses of commissioners of treaties and boundaries. See *Senate Executive Document* No. 38, 2nd Session, 45th Congress	....	$88,157,369.98
"Expenditures for surveys and disposition from January 1, 1785, to June 30, 1880, estimated."	....	46,563,302.07
"Quieting and purchasing the occupancy title of Indians to public domain."	....	187,328,903.91

STATEMENT SHOWING COST OF AND RECEIPTS FROM THE PUBLIC DOMAIN FROM THE GEORGIA CESSION 1802 TO JUNE 30, 1913—Continued

	Receipts	Expenses
From the origin of the public domain to the 30th of June, 1880, the net cash receipts therefrom have been	$200,702,849.11	$322,049,595.96
Year		
1881	5,408,804.16	1,352,304.84
1882	8,394,516.04	1,514,906.87
1883	11,713,883.70	1,810,357.06
1884	12,789,405.09	1,895,779.30
1885	8,628,420.18	1,871,169.15
1886	9,031,064.34	1,657,143.09
1887	12,289,008.87	1,540,078.49
1888	13,547,137.45	1,649,474.59
1889	9,685,901.34	1,766,550.71
1890	7,780,517.61	1,787,233.59
1891	10,477,700.32	2,137,337.38
1892	4,860,109.69	1,982,546.85
1893	4,479,734.14	2,019,255.67
1894	2,767,824.32	1,600,255.59
1895	2,033,454.03	1,796,582.34
1896	2,106,361.67	1,646,007.91
1897	2,067,931.28	1,760,408.42
1898	2,277,995.18	1,737,725.23
1899	3,070,137.34	2,009,670.06
1900	4,379,758.10	2,067,409.33
1901	4,972,160.79	2,306,125.48
1902	6,261,937.18	2,302,498.11
1903	11,024,743.65	2,332,169.26
1904	9,283,341.98	2,567,342.69
1905	7,017,811.38	2,449,629.58
1906	7,585,523.90	2,100,595.28
1907	11,553,178.00	2,226,227.23
1908	12,715,709.46	2,342,420.85
1909	12,216,415.39	2,599,268.27
1910	11,463,924.06	3,064,928.70
1911	11,069,937.60	3,195,759.38
1912	9,973,048.00	3,573,692.88
1913	6,955,504.81	3,316,362.30
	$460,625,750.13 392,028,872.46	$392,028,672.46
	$68,596,877.67	

Note—Receipts and expenses to June 30 each year, including sales of Indian lands (money held in trust for the Indians).

Expenses of surveying Indian land cannot be obtained from the Commissioner of Indian Affairs.

Proportionate cost of war for holding the land not included.

Figures to June 30, 1880, from *The Public Domain*.

Figures from 1881 to 1913 from the annual reports of this office.

Area of public land remaining undisposed of June 30, 1913:

Surveyed	179,204,397 acres.
Unsurveyed	486,686,632 acres.

Indian, forest and other reservations not included in above.

APPENDIX II

DISPOSITION OF PUBLIC LAND IN TEXAS[1]

Purpose	Quantity in acres
Titled by authorities of Spain and Mexico*	26,280,000
Headright grants and certificates for military service, Republic of Texas*	36,876,492
Empresario contracts, Republic of Texas*	4,494,806
Preemption claims and homestead donations*	4,847,136
Grants to railways*	32,400,000
Grants to other internal improvement companies*	4,061,000
Capitol building†	3,050,000
County school fund	4,229,166
State school fund	45,000,000
University fund‡	2,289,225
Eleemosynary institutions*	400,000
Veterans of Texas Revolution*	1,169,382
Veterans of the Confederacy*	1,979,852
Sold to pay the public debt*	1,660,936
Ceded to the United States in 1850*	67,000,00
Total	235,737,995

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* Commissioner of the General Land Office, *Biennial Report*, 1910, pp. 21-31.

† Commissioner of the General Land Office, *Report of the Findings of a Special Commission*, 1899, p. 16.

‡ Commissioner of the General Land Office, *Biennial Report*, 1902, p. 37.

[1] The figures listed above are, for many items, approximations only. Nevertheless they are the best data available and for most purposes doubtless will be sufficient. An exact tabulation has never been made by the General Land Office as the following quotation from the *Biennial Report*, 1910, p. 25, shows: "All statements as to amount of land granted for any purpose are approximations only. There was never a system of accounting kept in the Land Office whereby anything like definite knowledge could be had as to the exact acres granted for any purpose. To get it exact one would have to go through each file, amounting to a million or more."

APPENDIX III

a The progress that has been made in developing small holdings in England under the *Act* of 1908 is indicated by the following statement from the last annual report on this subject. "The total quantity of land acquired under the *Act* is therefore 198,288 acres, 139,478 acres having been purchased for £4,601,692 and 58,810 acres leased for rents of £74,186 a year. Of this land 178,911 acres have been actually let by County Councils to 12,584 individual small holders, and 506 acres sold to 50 small holders, and the Councils of County Boroughs have let 1,259 acres to 218 individual tenants. In addition 8,436 acres have been let to 63 Cooperative Small Holding Associations, who have sub-let the land to 1,451 of their members, and 3,580 applicants have been provided with 47,500 acres by private landowners direct. The land acquired by the Board at Bournemouth is let to 16 individual tenants and one Small Holding Society, who hold 75 acres which is sub-let to 62 tenants. The land which has been acquired by County Councils, but which is not yet let in small holdings, amounts to 9,653 acres, which it is estimated will provide for 475 applicants, and the Councils of County Boroughs have about 310 acres not yet allotted, which will probably provide for about another 50 applicants. It appears, therefore, that the *Act* has resulted in the provision of small holdings for 18,486 applicants in seven years."—Board of Agriculture and Fisheries, *Annual Report, Part I. Small Holdings*, 1914, pp. 3–4 (Cd 7851.)

From Table F in the foregoing report (page 30) it appears, however, that the acreage acquired by County Councils constitutes only .7 of one per cent of the total acreage in England under crops and grass and only 4.7 per cent of the total acreage of "Holdings above 1 acre but not exceeding 50 acres."

b The comment of Mr. Marriott on the policy of creating state-aided ownerships and tenancies at the close of his four articles on the *Evolution of the English Land System op. cit.* is significant here, especially in view of the fact that by far the larger part of the small holdings thus created are tenancies rather than proprietorships. "Whatever may be the case in regard to large holdings, there seems to be no doubt that for the small holder the method of purchase in infinitely preferable to that of tenancy under a public authority. Indeed, the system under which, as at present, the smallholder embarks upon the profitless task of buying the land, by annual installments included in his rent, not for himself but for the County Council, seems to combine every possible disadvantage. Under the alternative plan of purchase, every year, or every installment, brings the cultivator nearer to the goal of complete and unfettered ownership.

"Not that small holdings, whether purchased or rented, can be regarded as a panacea. In certain districts, under certain conditions, their multiplication would be an unmitigated gain. But the best friends of agriculture are at one with the hard teachings of experience in warning us that the policy, if indiscriminately adopted, can result only in acute distress and cruel disillusionment.

"But whatever method—ownership, tenancy, cooperation, or what not—one condition is essential to improvement: a sense of security and stability. What the land wants is a steady application of capital, provided either by a cultivating owner, or by a landlord, or by a well-secured tenant, or by a banker, and without security for the investment it would not be forthcoming from private sources, and ought not be forthcoming from the state.

"In regard to the State-aided purchase on a large scale, one point deserves attention. Lord Eversley has made it clear that the scheme cannot be recommended to England on the analogy of Ireland. In Ireland only a moiety of the ownership attached to the landlord, and had to be purchased from him. The advances made by the State to the tenant have been made therefore largely on the security of the tenant's own moiety. This security is entirely lacking in the case of English tenants and the lack of it greatly affects the financial complexion of any purchase scheme which can be devised. Nevertheless, a scheme must be devised, and for a few years some risks must be taken. If the plan of reducible mortgages—under which the tenant repays the principal by annual installments—be adopted the initial risk will not be great, and it will diminish every year. But the State must not go too fast. The politicians must not be permitted, for their own interested reasons, to hurry it. The patient is not *in extremis;* if let alone he would soon be convalescent. *Festina lente* is a sound maxim of statesmanship, and it is pre-eminently applicable to any scheme for converting, by means of State capital, the cultivators of the soil into proprietors. On every ground, social, political and economic, such a conversion, is desirable on a considerable but not on a universal scale. And if the state will consent to 'go slow,' the end may be attained without appreciable risk to public credit and with every advantage to the common weal." Marriott, J. A. R., *op. cit.* Vol. 95, pp. 552–553.

c Some doubtless will feel inclined to question this assertion, especially in view of the fact that public land can be purchased at any time during the period referred to at prices ranging from 12½ cents to many dollars per acre and that more than 250,000,000 acres (see report of the Public Land Commission, 1905, p. 361) were disposed of for cash. Nevertheless the writer believes that the land system of a country must be interpreted in the light of its practical administration as well as its legal and theoretical aspects. Historically the fact seems well established that there was scarcely a time during the nineteenth century when land could not be had in the United States without money and without price. Mr. Treat in his *National Land System* (pp. 373 ff.) points out that, prior to 1820, "in most cases the lands were being located upon by squatters. And this serves to introduce a most interesting character whose position was gradually changing throughout these years. The squatter took up land in spite of the system and in order to bring him under it some sort of preemption was necessary. Enough has been said, therefore, to indicate that before 1820 the regulations for the sale of public lands affected only a portion, not more than a fourth at most, of the men who were engaged in the westward movement. . . .

"So during the half century of land legislation the squatter developed from a trespasser, a violator of the laws of the Union, to a public benefactor, a man whose bravery and whose sacrifices had opened great areas to peaceful settlement and who merited well of the nation. The 'actual settler' always received a certain sympathy in Congress. The land laws were stringent enough to punish intrusions upon the public domain, but remembering how frequently squatters hold lands even within our cities, it is easy to understand how difficult it was to enforce the laws prohibiting unlawful settlement along the thousands of miles of public land frontier. . . . It was not a pleasant role for Congressmen to denounce the squatters. They were law-breakers, to be sure, and yet in many cases they were very estimable criminals. And when the land revenue was no longer needed to help support the government, it became easy, even for Congressmen from the East and South, to favor more liberal treatment for the actual settler."

d White, *op. cit.* 1:527. The following is a copy of the Act.

Decree Number 70.

The Congress of the State of Coahuila and Texas has thought proper to decree:

Art. 1. The lands acquired by virtue of the colonization laws, whether general laws of the republic or private laws of the state, by native or foreign colonists, and by empresarios, shall not be subject to the payment of debts contracted previous to the acquisition of said lands from whatever source the said debts originate or proceed.

Art. 2. Until after the expiration of twelve years from having held legal possession, the colonists and empresarios cannot be sued, or incommoded by the judges, on account of said debts.

Art. 3. After the expiration of the term prefixed in the foregoing article, although they may be sued for said debts, they shall not be obligated to pay them in lands, implements of husbandry, or tools of their trade or machines, but expressly in fruits or money in a manner not to affect their attention to their families, to their husbandry or art they profess.

For its fulfillment the governor of the State shall cause it to be printed, published and circulated.

Given at the city of Leona Vicario, on the 13th day of January, 1829.

(The names of the signers are not given in the book.)

e "With the close of reconstruction in Texas and the return of settled business and political conditions, the state entered upon an era of great activity in railroad construction. During the two decades from 1870 to 1890, more than eight thousand miles of railroad were constructed within the state, and our transportation system took on the shape it has since retained. In 1870, there were 500 miles of line in operation in the state; in 1890 there were 8,700 miles in operation. There were times during this period when construction was pushed forward with tremendous energy, as in the years 1881 and 1882 when nearly 2,800 miles of line, or more than 100 miles per month, were opened for traffic. There were other periods when owing to hard times, or possibly to reckless legislation, construction almost came to a standstill, as in the two years 1874 and 1875 when only 107 miles were put in operation, or the years 1883 and 1884, when 189 miles were open for traffic. The small construction in the last named years was due mainly to the repeal of the land grant acts and the reduction of passenger fares from five to three cents per mile, changes made by the legislature of 1882."—Potts, *op. cit.* pp. 40–41.

f Information on this point is somewhat contradictory. The following quotations illustrate partly the difficulty involved in making any exact statements as to the results that have been obtained in a financial way in our national land system: Dr. Ely, for instance, says (*Outlines of Economics*, 1908, p. 593), "More money has been spent for the purchase, survey and care of the public lands than has been received from their sale and lease."

Dr. Albert Shaw in his *Political Problems of American Development*, page 87, also says: "These lands cost the government including the cost of surveying and administration, about $150,000,000 more than they brought into the treasury."

Dr. Albert Bushnell Hart, in his *Practical Essays in American Government*, page 241, after referring to Jefferson's expression of the hope that the public lands would liberate the national government from its debt, says: "It is true that the proceeds of the public lands did wipe out the last vestiges of the debt which had existed in 1787. It is true that the lands had, up to June 30, 1883, brought into the treasury of the United States the smart amount of two hundred and thirty-three million dollars. It is equally true that, except for the period from 1830 to 1840, the lands have been a drain upon our finances. At the end of the financial year, 1882–3, the government was out of pocket so far as cash outlay and receipts are measures of the value of the lands, more than one hundred and twenty-six millions of dollars."

In the autumn of 1913 the writer addressed a letter of inquiry concerning this point to the Commissioner of the U. S. Land Office. In reply he received an itemized statement of expenditures and receipts of the federal government for the Public Domain which shows an excess of receipts over expenditures amounting to $68,596,877.67. For a copy of this letter and statement, see Appendix I.

g The available school fund provided by the state consists of the income from the permanent school fund, one-fourth of all the state occupation taxes, a poll tax of one dollar levied on all male residents between the ages of 21 and 60 and a state levy of twenty mills on all real and personal property. For the year 1907–8 the apportionment from this fund was $6, and for 1908–9 it was $6.75 per capita for all children within the scholastic age. In 1908 the available school fund amounted to $5,501,791.13. The part of this fund which was derived from the income of the permanent school fund amounted to $1,214,941.32, or a little less than one-fifth of it. This is by far the greater part of all the income logically attributable to the proceeds from the sale of school land in frontier settlements and represents the annual return from what was paid to the state in the form of "unearned increment." The remainder was obtained from taxation and necessarily must have come for the most part from the older and more thickly settled communities. But in the apportionment for the same year, 158 out of 243 counties received more from the state school fund than was collected from them in state taxes for school purposes. Some of them received two and even three times as much. Comptroller of Public Accounts, *Annual Report*, 1908, pp. vi and 119.

h Art. VII, sec. 6, Revised Statutes, 1911, p. xlii.

It is interesting in this connection to note the comment of Governor Pease in 1855 regarding the donation of public lands to counties for school purposes. He said: "The school fund may be greatly increased by a judicious use of the four leagues of land that have heretofore been granted to each county of the state for public schools. It is questionable whether these lands will ever accomplish much good, if they are allowed to remain in the possession of the counties, for it appears from information furnished by the commissioner of the General Land Office, that but 954,181 acres, of the 1,753,848, to which the ninety-nine counties of the state are entitled, have yet been selected.

Forty-one counties only have selected their full amount, twenty have selected 227,989 acres of the 354,240, to which they are entitled, and thirty-eight have made no selections, so that 799,307 acres yet remain to be selected. Nineteen of the counties which have made no selections were organized in 1846 or previous to that time, six were organized in 1848 and thirteen were organized at different periods between the years 1849 and 1854...
It is unfortunate that these lands were not, at first, set apart to be managed by the state itself as a general fund for the common benefit of all the counties, for they would have been selected long since, in sections of the state where their value would have been greatly increased by the settlements since made." *Senate Journal*, 6th Legislature, page 15.

[i] Knight, George W., *Land Grants for Education in the Northwest Territory*, Publications of the American Historical Association, 1: 166. In regard to this subject the author says: "A law was enacted in 1842 providing that the associate judges should, on application of the purchaser, examine any school land purchased at eight dollars an acre or over, and appraise its value in its actual condition at the time when it was first bought. The difference between this appraised value and the contract price was to be credited to the purchaser. The only proviso was that the reduction should not be more than forty per cent of the price named in the contract. This remarkable law permitted every one who had purchased school lands between 1837 and 1841 to obtain his title by paying a lower price than he had voluntarily offered. Under its provisions the school fund was lessened over one hundred and seventy-five thousand dollars. The legislature was, indeed, generous. The law reminds one of the provisions in Ohio by which lessees were permitted to purchase lands at old and low valuations. All that the most tender-hearted and weak-headed sympathy could demand would have been yielded by permitting past contracts to be modified according to the true value of the land at the time of appraisement."

[j] The person desiring to purchase surveyed land subject to sale under this act is required to make a separate application in writing for each tract applied for and send it by mail and not by any one in person to the Commissioner of the General Land Office. This application must not be less than the value fixed by the Commissioner. It must also contain an affidavit of the applicant to the effect that he desires to purchase the land for a home or as land which he may properly and legally acquire in addition to that which he already owns, and that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation. The application must also be accompanied by the obligation of the applicant for a sum equal to the amount of a deferred payment. The envelope in

which this application is sent to the Land Office must have endorsed on it in proper form the following information: "Application to buy land; Section.........., Block.........., Grantee.........., County.........., Date on Market.........." When an envelope thus endorsed is received at the Land Office, it must be securely preserved by the Commissioner or his Chief Clerk without being opened until the day following the date endorsed thereon as the one on which the land comes on the market. At that time all the applications are opened by the Commissioner or his Chief Clerk in the presence of the applicants or their representatives if they desire to be present and the land is awarded to the highest bidder.

[k] Commissioner of the General Land Office, *Biennial Report*, 1902, p. 37; see also State Treasurer, *Annual Report*, 1908, p. 34. The following table shows the number of acres leased at the various rates and the income derived therefrom:

Rate per Acre	Number of Acres	Rental
At 2 cents an acre....................	384,840	$7,696.80
At 3 "	257,243	7,717.29
At 4 "	61,440	2,457.60
At 4½ "	119,040	6,356.80
At 5 "	378,560	18,928.00
At 6 "	14,080	844.80
At 7 "	825,022	57,751.54
At 8 "	32,000	2,560.00
Total..............................	$2,072,225	$103,312.83

Average rate per acre, 4.9 cents.

The Board of Regents for the university in making up the estimate for the biennial period 1915–16 estimates the receipts from land leases at $153,391.12 (*Biennial Report* 1912–14, p. 5).

[l] Bray, W. L., *Forest Resources of Texas*, Bulletin of United States Forestry Bureau, No. 47, 1904; p. 37. In discussing this subject the author says: "Here is at hand sufficient raw material to support for many years establishments for working up the forests into furniture, wagon timbers, implement handles, and all manner of things now shipped into the state from great distances. Yet the manufacturer can come none too soon for the utilization of this great timber resource. So rich is the soil, that clearing for settlement is outstripping the lumbermen. Field after field of unsurpassed forest is being deadened and destroyed merely to get rid of the trees. The best thing that can happen in the interest alike of the private owner and the state is

the rapid development of a market for this timber, which otherwise is likely to be largely wasted, although certain to be salable at a large profit within a few years, if the impatience of the owners to realize an immediate value could be restrained." See also Scott, John W., *Conservation of Mineral and Lumber Resources of Texas* in *The Land Problem of Texas*, pp. 102–107.

m *Ibid.*, p. 42. Note also the tenor of the following statement: "It is plain from the survey of the prospects of private management of forests in Texas, that, in spite of the conditions favorable to its practice in many parts of the State and in spite of the hopeful beginning which has already been made towards introducing it in the longleaf pine territory, unaided private initiative will not suffice to protect the public interests affected by forest destruction. Under the lumbering methods now employed the pine forests are either ruined or so severely injured that their productiveness is greatly impaired. On the longleaf pine lands reforestation under present conditions is practically impossible. On loblolly and shortleaf lands reforestation is rapid enough, but the pine for the most part is replaced by scrub oak thicket. Fires and taxes remove the inducement to the forest owner to cut with reference to subsequent crops. The owners of small tracts and woodlots lack the knowledge required to make the most of their own holdings. Communities depend upon the maintenance of the forest cover for their water supply, or for protection against floods and silt, are exposed to the consequences of deforestation by land owners at a distance, acting solely with reference to their private interests. Left to themselves the forces now at work will result in an impoverishment of the resources of the state which it will soon be too late to prevent, and will produce conditions necessitating remedial measures at very heavy public expense."

n The following table shows number of tenants concerning whom information was obtained in 1913, and the average amount of property reported by them in four representative counties investigated by students in the extension department of the University of Texas.

County	Number of tenants	Average value of property
Robertson	117	$311.92
Brown	103	318.59
Matagorda	38	353.00
Fort Bend	108	272.03

For further reference see *Studies in Farm Tenancy, op. cit.* pp. 36–47 and *Land Problem, op. cit.* pp. 16–20.

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